

EXHIBIT B

Page 1

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6 INTERNATIONAL BROTHERHOOD OF ELECTRICAL
7 WORKERS LOCAL 98 PENSION FUND, on behalf of
8 itself and all others similarly situated,

9 Plaintiffs,

10 vs.

11 DELOITTE & TOUCHE LLP, DELOITTE LLP,
12 Defendants.

13 -----x
14 REMOTE VIDEOTAPED DEPOSITION OF TODD NEILSON
15 Friday, September 10, 2021

22 Reported by:
23 Amy A. Rivera, CSR, RPR, CLR
24 JOB NO. 198395

1

2 September 10, 2021

3 10:05 a.m.

4

5 REMOTE videotaped deposition of
6 TODD NEILSON held pursuant to Notice, before Amy
7 A. Rivera, Certified Shorthand Reporter,
8 Registered Professional Reporter, Certified
9 LiveNote Reporter, and a Notary Public of the
10 States of New York, New Jersey and Delaware.

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2 R E M O T E A P P E A R A N C E S:
3 COHEN MILSTEIN SELLERS & TOLL
4 Attorneys for Plaintiffs
5 1100 New York Avenue, NW
6 Washington, DC 20005
7 BY: MOLLY BOWEN, ESQ.
8 LAURA POSNER, ESQ.

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14 Attorneys for Defendants
15 55 Hudson Yards
16 New York, New York 10001
17 BY: JED SCHWARTZ, ESQ.
18 KINGDAR PRUSSIEN, ESQ.

19
20 A L S O P R E S E N T:
21 Chassity Bobbitt - Milbank
22 Matthew Chin-Quee, Legal Video Specialist
23 Eli Wykell
24
25

1 TODD NEILSON

2 VIDEOGRAPHER: We're now on the
3 record.

4 This is the start of Tape No. 1 of the
5 videotaped deposition of Todd Neilson in the
6 matter International Brotherhood of
7 Electrical Workers Local 98, et al., v.
8 Deloitte & Touche LLP, et al., in the United
9 States District Court for the District of
10 South Carolina, No. 3:19-cv-3304.

11 All parties have agreed to appear
12 remotely on September 10, 2021, at
13 approximately 10:05 a.m.

14 My name is Matthew Chin-Quee from TSG
15 Reporting, and I'm the legal video
16 specialist.

17 The court reporter is Amy Rivera in
18 association with TSG Reporting.

19 Will counsel please introduce
20 yourself.

21 MR. SCHWARTZ: I think we noted all
22 appearances on the record.

23 VIDEOGRAPHER: Right. All appearances
24 are noted on the record.

25 Will the court reporter please swear

1 TODD NEILSON

2 in the witness.

3 T O D D N E I L S O N, having been duly sworn
4 by the Notary Public, testified as follows:

5 MR. SCHWARTZ: Thank you.

6 EXAMINATION

7 BY MR. SCHWARTZ:

8 Q. Mr. Neilson, thank you for your
9 patience with the technology issues this morning.

10 Mr. Neilson, have you been deposed
11 before?

12 A. Never.

13 Q. Okay. So this is going to proceed in
14 a series of questions and answers. I will be
15 asking questions. You'll be giving answers. And
16 it's very important that, particularly given the
17 platform in which we're doing this, that you let
18 me finish my question even if you know what I'm
19 going to ask and then provide your answer, and I
20 will do my best to let you finish your answer
21 before I move on.

22 Do you understand?

23 A. Yes. Thank you.

24 Q. And as you've just done, it's very
25 important that you have to answer orally because

1 TODD NEILSON

2 the court reporter can't pick up a shake or nod of
3 the head.

4 Do you understand?

5 A. Yes.

6 Q. If you need clarification on a
7 question or if you don't understand a question,
8 please feel free to let me know that. If you
9 don't, I'll assume you understood the question.

10 Do you understand?

11 A. Yes. Thank you.

12 Q. And your counsel can confirm this,
13 from time to time, your counsel may object to my
14 questions, but unless your counsel instructs you
15 not to answer, you're still required to answer my
16 questions.

17 Do you understand that?

18 A. Yes.

19 Q. We will probably be showing some
20 documents to you on the screen as we proceed
21 today. There are likely to be multipage
22 documents, and we will be giving you the ability
23 to flip through them so that you have the ability
24 to take whatever time you need to review a
25 document before I ask you questions about it.

1 TODD NEILSON

2 Do you understand?

3 A. Yes. Thank you.

4 Q. You also you should feel free to ask
5 for a break whenever you need it. I'll try to
6 remind all of us after we've been going for about
7 an hour, but if you need a break before then, you
8 let me know.

9 Do you understand?

10 A. I will, yes.

11 Q. Is there any reason that you're aware
12 of that you can't give truthful and accurate
13 testimony today?

14 A. No.

15 Q. Mr. Neilson, I'll start with some
16 background.

17 Who is your current employer?

18 A. IBEW Local Union 98.

19 Q. And how long have you -- well,
20 withdrawn.

21 What is your current position with
22 IBEW Local Union 98?

23 A. My job title is business
24 representative, and I am also a member of Local
25 Union 98's executive board. That's an elected

1 TODD NEILSON

2 position, unpaid.

3 Q. Have you -- if I referred to IBEW
4 Local Union 98 as "the Union," will you understand
5 what I mean?

6 A. Yes.

7 Q. Have you ever been treasurer of the
8 Union?

9 A. Yes.

10 Q. When were you treasurer?

11 A. I was appointed to treasurer in the
12 year 2003. There was a vacancy. Someone had
13 left. Then I was asked to fill that vacancy, and
14 I held that position up until December of 2020,
15 when I was asked to fill an additional vacancy as
16 an executive board member.

17 Q. And who replaced you as treasurer of
18 the Union?

19 A. A gentleman named Michael Magee.

20 Q. So you currently hold two positions
21 with the Union, business representative and
22 executive board member?

23 A. Yes.

24 Q. Is there any other title besides
25 executive board member or is it just executive

1 TODD NEILSON

2 board member?

3 A. No, that's all.

4 Q. What are your responsibilities as a --
5 withdrawn.

6 How long have you been a business
7 representative for the Union?

8 A. I became a business representative in
9 June of 2016.

10 Q. What are your responsibilities
11 generally speaking as business representative for
12 the Union?

13 A. As a business representative, I am
14 assigned to a geographical area to oversee the
15 jobs going in there -- going on in that area and
16 to make sure that upcoming projects, as they come
17 to fruition, that we have a significant amount of
18 our signatory contractor submit on that project --
19 submit pricing on that project and oversee that to
20 make sure that all of the Union rules are enforced
21 and protect the rights of our members and the
22 safety aspect of the job site so that our folks on
23 the job sites are represented and that their
24 safety and their issues -- you know, their
25 personal issues are protected.

1 TODD NEILSON

2 Q. Generally speaking, what are your
3 responsibilities as an executive board member?

4 A. As an executive board member, we
5 review all of the standing and non-standing bills
6 and approvals in between meetings in order to pay
7 the bills and make sure that all of the -- the
8 funds and as well as the members have -- are
9 enforced and just to make sure that the day-to-day
10 stuff goes through as it applies to the funds and
11 making sure that all the bills get paid in a
12 timely fashion.

13 Q. How many people are on the executive
14 board?

15 A. There are seven. President,
16 vice-president have seats on the executive board,
17 as well as five executive board members.

18 Q. Who is the president?

19 A. Brian Burrows.

20 Q. Who's the vice-president?

21 A. Timothy Browne.

22 Q. And are all of the other executive
23 board members employees of the Union?

24 A. Yes. In some way, shape, or form,
25 they're all union members.

1 TODD NEILSON

2 Q. Does the Union itself employ
3 individuals?

4 MS. POSNER: Objection.

5 Jed, which one of the 30(b) (6) topics
6 are you referring to here? 'Cause it's not
7 about his employment and it's not about the
8 lead plaintiff here.

9 MR. SCHWARTZ: Well, I'm just trying
10 to get some background on the witness. I
11 think it's totally within the ability of me
12 to get an understanding of the witness'
13 background and responsibilities at the
14 Union.

15 MS. POSNER: You certainly can ask him
16 about his background and responsibilities,
17 but you're asking about other personnel at
18 the Union and what their responsibilities
19 are.

20 MR. SCHWARTZ: Well, that's not what I
21 was asking. I asked: Does the Union itself
22 employ individuals?

23 MS. POSNER: Right. But, again --

24 MR. SCHWARTZ: We're talking about --
25 the witness has said he holds a position

1 TODD NEILSON

2 with the Union. I'm trying to understand
3 what his position is.

4 Let me rephrase that.

5 BY MR. SCHWARTZ:

6 Q. Mr. Neilson, are you an employee of
7 the Union?

8 A. Yes. I am an employed -- I am
9 appointed -- appointed business agent by the
10 business manager, as he -- as he deems necessary,
11 yes, but at-will.

12 Q. And so you are paid by the Union,
13 correct?

14 A. Correct.

15 Q. What were your responsibilities as
16 treasurer of the Union when you held that
17 position?

18 A. When I was treasurer, the treasurer
19 position has little to -- it was -- it's
20 essentially a dual signature on the checks.

21 I didn't approve any expenditures or
22 anything. Those are done at the executive board
23 level. A treasurer is merely a secondary
24 signature on any kind of financial documents and
25 the checks.

1 TODD NEILSON

2 Q. You said that you were currently an
3 at-will employee at the Union. Is that correct?

4 A. Yes.

5 Q. And who can make the decision to fire
6 you as an employee?

7 A. The business manager.

8 Q. And who is that?

9 A. John J. Dougherty.

10 Q. Mr. Neilson, are you familiar with
11 something called the "International Brotherhood of
12 Electrical Workers Local 98 Pension Fund"?

13 A. I am.

14 Q. And if I refer to that as "the Fund,"
15 you'll know what I mean?

16 A. Yes.

17 Q. Do you hold any positions at the Fund?

18 A. I am Union trustee on the Fund.

19 Q. How many trustees are there at the
20 Fund?

21 A. There are eight available positions as
22 trustees. There are currently seven trustees,
23 three representing the Union and four representing
24 management, with one open seat on the Union end
25 that we had a retirement in the last couple of

1 TODD NEILSON

2 years and it just hasn't been fulfilled yet.

3 Q. Does the Union -- sorry -- withdrawn.

4 Does the Fund have any employees?

5 A. No.

6 Q. Are there any other managers of the
7 Fund besides the Board of Trustees?

8 A. We have Fund managers, if that's your
9 question.

10 Q. Would those be outside investment
11 advisers?

12 A. We have outside investment advisers.
13 We also have a Fund administrator, which is Frank
14 M. Vaccaro & Associates, and they're a Fund
15 administrator for most of our funds.

16 Q. And what function does the Fund
17 administrator perform?

18 A. When our contractors send in the money
19 for the benefits, they disburse the money into the
20 appropriate funds and oversee it, track it, and
21 everything else.

22 Q. How did you come to be appointed as a
23 trustee of the Fund?

24 A. They had asked me. They had an
25 opening, and they had asked me if I were to be

1 TODD NEILSON

2 interested in fulfilling the vacancy on -- on the
3 trust.

4 Q. And who's the "they" that asked you?

5 A. They being -- well, Brian Burrows is
6 the chairman of all funds. By virtue of this
7 position as treasurer of the Fund -- of the -- as
8 president -- excuse me -- of the Union, he
9 oversees all of the funds, and he and I guess the
10 executive board decide about filling vacancies on
11 all of our committees, which is essentially what
12 this is. It's a committee appointment.

13 Q. And when you say, "executive board,"
14 you mean executive board of the Union?

15 A. Yes.

16 Q. And I think you said there is somebody
17 named Mr. Dougherty. Is that correct?

18 A. He's not on the executive board. He's
19 the business manager.

20 Q. Okay. All right. Which entity --

21 MR. SCHWARTZ: Can we bring up Tab 1?

22 (Exhibit 15, Amended Notice of
23 Deposition of the Fund, was marked for
24 identification at this time.)

25

1 TODD NEILSON

2 BY MR. SCHWARTZ:

3 Q. Mr. Neilson, this is -- we're going to
4 be bringing up some documents on the screen as we
5 go today, as I mentioned before, and marking them
6 with exhibit numbers. And you'll have -- you
7 should have the ability to scroll through and zoom
8 in because they can be small.

9 We've marked as Exhibit 15, a document
10 that's titled "Amended Notice of Deposition of the
11 Fund."

12 Have you seen this before?

13 A. Yes.

14 MR. SCHWARTZ: I'm not sure if
15 somebody just went off of mute. I'm going
16 to want -- that's better. Thank you.

17 Q. And, Mr. Neilson, if you page through,
18 you'll see there is a section that's labeled
19 "Topics."

20 Let me know when you've reached that.

21 A. Yes.

22 Q. And then -- actually, it's, I think,
23 two pages in, there's a section labeled "Topics"
24 that begins 1, and it goes on for several pages.

25 A. Yes.

1 TODD NEILSON

2 Q. Take whatever time you need to review
3 the topics. They go 1 through 34.

4 And my question is: Are you prepared
5 to testify as to each of these topics today?

6 MS. POSNER: Objection as to the --
7 pursuant to the objections and the pending
8 protective order with regard to certain of
9 the topics in this document.

10 MR. SCHWARTZ: I'm not really sure
11 what that means. I don't understand. There
12 have been objections, and there's a
13 protective order, but I'm asking the witness
14 what he's prepared to testify on.

15 MS. POSNER: Right. And I'm saying,
16 he's prepared to testify subject to our
17 objections and the pending motion for a
18 protective order.

19 MR. SCHWARTZ: Well, I'd just like to
20 hear from the witness what he's prepared to
21 testify on.

22 A. I am.

23 Q. Mr. Neilson, did you prepare for your
24 deposition today?

25 A. Yes.

1 TODD NEILSON

2 Q. How did you prepare for today's
3 deposition?

4 A. I went through with my attorney just
5 to -- being as I've never done one of these
6 before, I didn't know what to expect -- just to
7 try to calm me down and make sure that I was
8 comfortable -- as comfortable as possibility.

9 Q. Did you review any documents in
10 preparing for today's deposition?

11 A. Yes.

12 Q. Approximately how many documents?

13 A. A lot. I don't know.

14 Q. Did any --

15 A. It's a pretty thick binder.

16 Q. Sorry. Go ahead.

17 A. It's a pretty thick binder.

18 Q. Did any of those documents refresh
19 your recollection about the things they related
20 to?

21 A. Yes.

22 Q. Do you recall which documents
23 specifically refreshed your recollection about the
24 things to which they related?

25 A. No, not that stands out to me over

1 TODD NEILSON

2 another.

3 Q. Did you meet with anyone else other
4 than counsel in preparing for your deposition
5 today?

6 A. No, just counsel and Molly, her
7 assistant.

8 Q. Did you speak with anyone other than
9 counsel in preparing for your deposition today?

10 A. No.

11 Q. So you didn't make any attempt to
12 speak to anyone at the Fund or the Union about any
13 of the topics listed in Exhibit 15?

14 A. No.

15 Q. About how long did you spend with
16 counsel preparing for your deposition today?

17 A. Several hours.

18 Q. Was it in the course of several
19 meetings or just one meeting?

20 A. One continuous meeting yesterday and
21 then prior.

22 Q. So the meeting yesterday was several
23 hours. Is that right?

24 A. Yes.

25 Q. And then you said you had prior

1 TODD NEILSON

2 meetings with counsel. Is that correct?

3 A. Yes, just to familiarize myself with
4 the case.

5 Q. And when did that prior meeting occur?

6 A. I don't know off the top of my head.
7 I don't have an exact date. There's been phone
8 calls -- numerous phone calls over the course of
9 the last few months.

10 Q. And were those phone calls
11 specifically in preparation for the deposition
12 today or for other reasons?

13 A. I guess everything was leading up to
14 today. It was just to familiarize myself and make
15 sure I had a good understanding of what was going
16 on.

17 Q. Were there any topics that you were
18 not familiar with that you had to educate yourself
19 on for today's deposition?

20 A. A lot of the stuff, actually, you
21 know, understanding what happened here, being that
22 I'm an electrician and not an attorney or an
23 investment manager, so I needed to get myself up
24 to speed as to what the issue was at hand.

25 Q. You see Topic 1 says, "The claims

1 TODD NEILSON

2 asserted and allegations in the complaint"?

3 A. Yes.

4 Q. Well, before we get to that, do you
5 understand that you are testifying today as the
6 corporate representative of the Fund?

7 A. I do.

8 Q. And what do you understand that to
9 mean?

10 A. I understand that to mean that
11 whatever this -- that it's my duty and fiduciary
12 responsibility to the Fund to -- to oversee this
13 case, make sure that the attorneys are doing what
14 they need to do, and to try to get us a most
15 favorable settlement for all the class holders in
16 this case.

17 Q. Do you understand that as the
18 corporate representative here today, I'm entitled
19 to understand the knowledge and information of the
20 Fund and not just your personal knowledge about
21 this case?

22 A. Sure. I get that.

23 Q. And you're prepared to testify as to
24 the knowledge of the Fund on the topics in
25 Exhibit 15. Is that correct?

1 TODD NEILSON

2 A. I am.

3 Q. Topic 1 says, "The claims asserted and
4 allegations in the complaint."

5 Do you see that?

6 A. I do.

7 Q. What are the claims that have been
8 asserted in the complaint?

9 A. The claims that have been asserted is
10 that Deloitte & Touche as the auditors for SCANA
11 and, you know, their negligence in reporting to
12 the -- the class holders, the stakeholders, the
13 people that have stock, that they didn't
14 divulge -- that they didn't do their due diligence
15 in overseeing it as the auditors of that project
16 and their funds, seeing that they weren't going to
17 be able to deliver as promised for their
18 investors.

19 Q. That who wasn't going to be able to
20 deliver as promised?

21 A. That the SCANA project wasn't going to
22 be done in time to successfully get over a billion
23 dollars' worth of incentives to have that project
24 done on time in tax credits.

25 Q. What's your -- what's the Fund's

1 TODD NEILSON

2 understanding of what Deloitte is accused of doing
3 wrong?

4 A. Could you rephrase that question? I'm
5 not sure I understand it.

6 Q. You're testifying on behalf of the
7 Fund, correct?

8 A. Yes.

9 Q. So what is the Fund's understanding as
10 to what Deloitte has done wrong?

11 MS. POSNER: Objection, asked and
12 answered.

13 You can answer.

14 A. That, as a result of their negligence,
15 that that investment lost money because they
16 didn't report it back to this -- stockholders.

17 Q. Are you aware that the Fund has
18 accused the defendants here of committing a fraud?

19 A. Yes.

20 Q. And so what's the basis for the Fund's
21 belief that Deloitte committed a fraud?

22 MS. POSNER: Objection, asked and
23 answered and calls for a legal conclusion.

24 You can answer, if you can.

25 A. As auditors, they should have been

1 TODD NEILSON

2 able to foresee that this project wasn't going to
3 be able to be completed on time in order to
4 achieve those 1-point-some billion dollars in tax
5 credits, which is what they were selling to the
6 stockholders. They should have been able to
7 foresee that that wasn't going to -- that time
8 frame wasn't going to be met.

9 Q. What's the Fund's basis for its belief
10 that, as auditors, the defendant should have been
11 able to foresee that the project wasn't going to
12 be completed on time?

13 MS. POSNER: Objection, asks for a
14 legal conclusion.

15 If you know the answer, you can.

16 A. If they were doing their due
17 diligence, they should have been able to see that
18 the project wasn't progressing in a timely fashion
19 in order to meet those deadlines, and that, first
20 and foremost, is fraudulent by not reporting it to
21 the stakeholders.

22 Q. What's the basis for the Fund's belief
23 that if Deloitte had been doing its due diligence,
24 it would have been able to see that the project
25 wasn't progressing in a timely fashion?

1 TODD NEILSON

2 MS. POSNER: Objection. Again, calls
3 for a legal conclusion. It's beyond the
4 scope.

5 A. I -- I thought I kind of answered that
6 question already.

7 Q. No, I don't think you did, so --

8 MS. POSNER: He's answered the
9 question four separate times, and you're
10 essentially asking him a contention
11 interrogatory.

12 If you want to keep asking it, he can
13 keep giving you the same answer, but I think
14 you've gotten the answer.

15 MR. SCHWARTZ: I haven't, and the
16 record's clear you didn't object on an
17 asked-and-answered basis, so I'll ask the
18 question again.

19 Q. What is the basis for the Fund's
20 belief that if Deloitte had been doing its due
21 diligence, it would have been able to see that the
22 project wasn't progressing in a timely fashion?

23 MS. POSNER: Again, asked and
24 answered, calls for a legal conclusion and
25 is an improper contention interrogatory

1 TODD NEILSON

2 prior to the completion of discovery.

3 But if you can answer again, feel
4 free.

5 THE WITNESS: I believe I've already
6 answered that, Laura.

7 BY MR. SCHWARTZ:

8 Q. What was that answer?

9 A. That they should have been able to
10 foresee that the -- that the building wasn't
11 getting completed and wouldn't be complete in that
12 same timely fashion in order to achieve those --
13 there was \$1.2 billion worth of tax incentives to
14 have this project done.

15 I think anybody that walked by a
16 project could see if the building was moving
17 forward, stalled. Anyone with limited to no
18 construction experience, walk a site of a
19 building, could see where they're at in the
20 construction stages, whether or not it was done or
21 not, whether it be a building or the nuclear
22 reactors, which is what this case did in SCANA.

23 Q. Would you include yourself in that
24 group of anyone who could walk by a construction
25 site could judge the progress?

1 TODD NEILSON

2 MS. POSNER: Objection.

3 Are you asking him as a representative
4 of the Fund what the Fund could do or him
5 personally?

6 BY MR. SCHWARTZ:

7 Q. In any capacity, do you include
8 yourself as one of those people?

9 MS. POSNER: Objection.

10 The deposition here is of the Fund.
11 So if you want to know about the Fund's
12 knowledge is, you're free to ask that.

13 Q. Well, you're an employee -- you're a
14 trustee of the Fund, right?

15 A. I am.

16 Q. So do you think that if the Fund had
17 sent you down to the construction site in South
18 Carolina, you would have been able to accurately
19 judge the progress of the nuclear site?

20 MS. POSNER: Objection, beyond the
21 scope.

22 Q. You can answer.

23 A. Just by walking by it, no. But
24 reviewing their financials and seeing what
25 everything else is in the grand scheme of things,

1 TODD NEILSON

2 probably, yes.

3 But I don't know for sure, because
4 it's rhetorical, the question you're asking me. I
5 didn't walk the site, so ...

6 Q. Right. But you said anybody could do
7 it, and I'm just trying to figure out if you
8 actually believe that or not.

9 You actually believe that anybody
10 could walk to the site and judge accurately the
11 progress of two nuclear power plant construction
12 projects?

13 MS. POSNER: Objection, misstates his
14 testimony.

15 Q. You can answer.

16 A. If that's what their responsibility is
17 as an employee of Deloitte, to know where they're
18 at, if they're the auditor, they should be
19 educated into what is going on with that project
20 before reporting it to its stockholders.

21 Q. But is it the Fund's testimony that
22 Deloitte had the obligation to monitor the
23 schedule for the construction project?

24 MS. POSNER: Objection.

25 If you can answer.

1 TODD NEILSON

2 It calls for a legal conclusion.

3 A. I don't know what their responsibility
4 was, but as the auditor, I think that they should
5 have done their due diligence a little bit better
6 reporting it to the stakeholders.

7 Q. Okay. What's your basis for that
8 statement?

9 A. You asked me my opinion, and I gave it
10 to you.

11 MS. POSNER: Hold on. Hold on,
12 Mr. Neilson.

13 Objection, calls for a legal
14 conclusion.

15 Q. What's your basis for your -- the
16 Fund's belief that Deloitte didn't do its due
17 diligence?

18 MS. POSNER: Objection, calls for a
19 legal conclusion.

20 A. Asked and answered, I believe, several
21 times.

22 Q. Well, your counsel can make the
23 objections. You're required to answer the
24 question.

25 So what is your basis for your

1 TODD NEILSON

2 testimony on behalf of the Fund that Deloitte did
3 not do its due diligence?

4 MS. POSNER: Objection, calls for a
5 legal conclusion and has been asked and
6 answered at least a dozen times at this
7 point.

8 If you can answer again, feel free.

9 A. I believe I've already answered that
10 numerous times.

11 Q. I don't think you have. So why don't
12 you explain to me where in your prior testimony
13 you answered your basis for your belief that
14 Deloitte has not done its due diligence?

15 MS. POSNER: Objection, calls for a
16 legal conclusion, asked and answered
17 multiple times now.

18 Mr. Neilson, if you want to repeat
19 your answer again, this will be the last
20 time.

21 A. As auditors of the project, they
22 should have done their due diligence and not made
23 false or -- excuse me -- they should have done
24 their due diligence in reporting to the
25 stakeholders where this project was, and knowing

1 TODD NEILSON

2 that it couldn't be completed on time, as stated,
3 in order to get that \$1.2 billion worth of tax
4 credits, in my opinion, they dropped the ball and
5 didn't do their due diligence.

6 Q. Right. It's that last part that I'm
7 asking about.

8 What's your basis for your testimony
9 that Deloitte didn't do its due diligence?

10 MS. POSNER: Objection, asked and
11 answered, calls for a legal conclusion, and
12 seeks information that is available through
13 discovery that has not been completed yet.

14 Jed, move it along.

15 MR. SCHWARTZ: He hasn't answered the
16 question.

17 He's said several times now, on behalf
18 of the Fund, that it's the Fund's view that
19 Deloitte didn't do its due diligence. It's
20 perfectly within my rights to understand the
21 basis for that testimony.

22 And if the witness doesn't have a
23 factual basis for that testimony, he can say
24 so, and that's fine, and we can move on.

25 MS. POSNER: He has provided to you

1 TODD NEILSON

2 his answer on multiple occasions. You don't
3 like the answer, that's fine, but you don't
4 get to sit here and harass him and ask the
5 same question over and over and over again.

6 MR. SCHWARTZ: I haven't done that.

7 BY MR. SCHWARTZ:

8 Q. Mr. Neilson, what facts are you
9 relying on when you testify under oath that
10 Deloitte didn't do its due diligence?

11 MS. POSNER: Objection, calls for
12 attorney-client privileged communications
13 now, asked and answered, and is an improper
14 contention interrogatory prior to the
15 completion of discovery.

16 MR. SCHWARTZ: Are you instructing him
17 not to answer?

18 MS. POSNER: I'm instructing him not
19 to convey any information provided to him
20 through counsel. If he knows anything
21 further than what he's already testified to,
22 he's welcome to provide that.

23 THE WITNESS: I believe I've already
24 gave him my answer several times to that
25 question.

1 TODD NEILSON

2 Q. What facts am I forgetting -- what
3 facts did you identify in response to -- that
4 would answer that question?

5 MS. POSNER: Same objection.

6 If you have anything further to add,
7 feel free. If not, you can say so as well.

8 A. I have nothing further to add to that.

9 Q. Well, I want to make sure I
10 understand. When I go back through the
11 transcript, if you've pointed to -- if you've
12 identified a fact that supports the Fund's belief
13 that Deloitte didn't do its due diligence, I want
14 to understand what that fact is.

15 I don't think you have, so if there's
16 a fact that supports that belief, I want to know
17 what it is.

18 Can you point me to the fact that
19 you've identified?

20 MS. POSNER: Same objection.

21 Jed, move on.

22 MR. SCHWARTZ: I will as soon as he
23 answers the question.

24 MS. POSNER: He's literally answered
25 the question to the best of his ability at

1 TODD NEILSON

2 least 12 times now.

3 Move on.

4 BY MR. SCHWARTZ:

5 Q. Mr. Neilson, will you agree with me
6 that you have not pointed to a single fact to
7 support the Fund's opinion that Deloitte didn't do
8 its due diligence?

9 MS. POSNER: Objection, misstates his
10 testimony.

11 Q. You can answer.

12 A. I believe I have. I've given you my
13 answers.

14 Q. Okay. So what fact did you point to
15 that I'm just not remembering?

16 MS. POSNER: Objection. Same
17 objections.

18 Please, move on. You are harassing
19 the witness.

20 Q. You can answer.

21 MR. SCHWARTZ: This shouldn't be
22 difficult. I want to know what the facts
23 are.

24 If he has no facts, say he has no
25 facts, but I want to know what facts are.

1 TODD NEILSON

2 Q. I'm entitled to understand what facts
3 you're relying on.

4 So, Mr. Neilson, what facts have you
5 testified to that supports the Fund's opinion that
6 Deloitte did not do its due diligence?

7 MS. POSNER: Objection, same as prior.

8 If you have anything further to add,
9 feel free to do so. If not, you can tell
10 Mr. Schwartz that as well.

11 A. I have nothing further to add to that,
12 Mr. Schwartz. I think I've answered that question
13 at least a dozen times, as Laura has kindly said,
14 so can we move on to the next question, please?

15 Q. No. We'll move on when you point me
16 to the fact that I'm not -- that I'm not
17 understanding.

18 If I'm wrong, then we can move on,
19 I'll apologize.

20 What fact?

21 A. I just testified to.

22 MS. POSNER: Okay. Jed, I am going to
23 instruct the witness not to answer this
24 question for the 15th time now.

25 You've asked and answered it many,

1 TODD NEILSON

2 many times. He's given you a response. You
3 don't like it, that's fine. But we're not
4 going to sit here all day and ask the same
5 question over and over again. You are
6 harassing the witness.

7 BY MR. SCHWARTZ:

8 Q. Are you going to follow your counsel's
9 instruction not to answer that question?

10 A. I am.

11 MR. SCHWARTZ: I'm going to ask the
12 court reporter to mark that portion of the
13 transcript, please.

14 Q. Mr. Neilson, have you read the
15 complaint in this case?

16 A. I have.

17 Q. When did you read it for the first
18 time?

19 A. I've read the complaint for the first
20 time when I became involved in the case.

21 Q. When was that?

22 A. I don't know the exact date.

23 You have that in front of you, right?

24 Q. Was it within the past month or so?

25 A. Month or -- about two months.

1 TODD NEILSON

2 Q. Who at the Fund, if anyone, reviewed
3 the complaint before it was filed?

4 A. Tara Chupka, who was our counsel,
5 in-house.

6 Q. And how do you know that Ms. Chupka
7 reviewed the complaint before it was filed?

8 A. 'Cause she was the one that provided
9 all the documents for discovery.

10 Q. Did you ask Ms. Chupka if she read the
11 complaint before it was filed?

12 A. I didn't ask her, no.

13 Q. How do you know that she did?

14 A. I don't know if she did. I assume she
15 did, but I don't know what she did. You would
16 have to ask her that.

17 Q. As the representative of the Fund, are
18 you aware of any anyone at the Fund reviewing the
19 complaint before it was filed?

20 A. Yes. Ms. Chupka and, of course,
21 Mr. Burrows, who was in there prior to me as the
22 plaintiff.

23 Q. Okay. Now, how are you aware that
24 Ms. Chupka reviewed the complaint before it was
25 filed?

1 TODD NEILSON

2 I thought you said you weren't aware
3 of that.

4 A. I didn't say that at all. I said she
5 was on it. I don't know if they read it for sure
6 or not.

7 You're twisting my words, Counsel.

8 Q. Maybe there's a miscommunication.

9 As a representative of the Fund, are
10 you aware of anyone at the Fund reviewing the
11 complaint before it was filed?

12 A. Yes.

13 Q. Okay. Who at the Fund reviewed the
14 complaint before it was filed?

15 A. Tara Chupka and Brian Burrows.

16 Q. And how do you know that Ms. Chupka
17 reviewed the complaint before it was filed?

18 A. Well, because she was responsible for
19 getting the stuff together, and she also was on
20 calls with Laura and myself to try to get me up to
21 speed with what was going on.

22 So I misspoke earlier with that. So,
23 of course, she read it.

24 Q. And Ms. Chupka has told you that she
25 reviewed the complaint before it was filed?

1 TODD NEILSON

2 A. I didn't have conversation with her to
3 that specific -- excuse me.

4 Q. So as you sit here today as the
5 representative of the Fund, you don't know one way
6 or the other whether Ms. Chupka reviewed the
7 complaint before it was filed. Is that fair to
8 say?

9 MS. POSNER: Objection, misstates his
10 testimony.

11 Q. You can answer.

12 A. She didn't tell me she reviewed it. I
13 just assumed based on her knowledge of the case
14 that she read it.

15 Q. Okay. Without assuming --

16 A. Excuse me -- and being an attorney
17 working inside, I would assume that she read that
18 and that's ...

19 Q. Were you finished?

20 A. Yes.

21 Q. So you're assuming that Ms. Chupka
22 read the complaint before it was filed, but you
23 don't know that, correct?

24 A. I never came out and asked her if she
25 read it, but that would be correct then, yes.

1 TODD NEILSON

2 Q. And how do you know that Mr. Burrows
3 reviewed the complaint before it was filed?

4 A. Again, I don't know, I never had a
5 conversation with him on it, but he had the
6 documentation on it that he was the original
7 plaintiff.

8 So just before I became -- I read it
9 first, too, before I put mine, so I just assumed,
10 so I didn't have any prior knowledge to that.

11 Q. Okay. So assumptions aside, you
12 don't -- sitting here as the representative of the
13 Fund, you don't know that anybody at the Fund
14 reviewed the complaint before it was filed. Is
15 that fair?

16 MS. POSNER: Objection, misstates the
17 testimony, and also calls for
18 attorney-client privileged communications
19 with counsel to the Fund.

20 Q. You can answer, unless your counsel
21 instructs you otherwise.

22 MS. POSNER: You can answer, just
23 don't reveal your communications with me or
24 with Ms. Chupka.

25 A. Then could you restate that question,

1 TODD NEILSON

2 Jed, please?

3 Q. Sure. Sure.

4 So putting assumptions aside, because
5 I'm just asking about facts, is it fair to say
6 that, as the representative of the Fund, you don't
7 know if anyone at the Fund reviewed the complaint
8 before it was filed?

9 MS. POSNER: Objection, misstates his
10 testimony.

11 A. Yes.

12 Q. What's the class period for the
13 complaint?

14 A. February 2016 through December 2017.

15 Q. I should have asked this before, but
16 are you looking at a document other than
17 Exhibit 15?

18 A. No.

19 Q. And who are the members of the class
20 that the Fund seeks to represent?

21 MS. POSNER: Objection.

22 Are you asking for the names?

23 MR. SCHWARTZ: I'm asking for the
24 Fund's understanding of the members of the
25 class.

1 TODD NEILSON

2 MS. POSNER: If you understand that --

3 I don't even understand that question.

4 A. I don't understand the question
5 either.

6 Q. Okay. What is the class that the Fund
7 seeks to represent?

8 A. I don't understand what you mean by
9 "what is the class."

10 Q. Do you understand that this action
11 that you're testifying in is what's called a
12 "putative class action"?

13 A. Yes, I guess.

14 Q. What's your understanding of what --

15 A. I'm not an attorney. I'm an
16 electrician by trade, so ...

17 Q. What's your understanding of what a
18 class action is -- withdrawn.

19 I should be clearer. I'm asking about
20 the Fund's knowledge.

21 What's the Fund's understanding of
22 what a class action is?

23 MS. POSNER: Are you asking about a
24 securities class action or just class
25 actions in general?

1 TODD NEILSON

2 MR. SCHWARTZ: Whatever the Fund
3 understands a class action to be.

4 MS. POSNER: It's beyond the scope of
5 the 30(b) (6) .

6 If you understand the question, you
7 can answer.

8 A. I -- I don't know what counsel -- a
9 class action is just a broad suit against a
10 company or an entity.

11 Q. And do you understand that the Fund
12 has sought to have this action certified as a
13 class action?

14 A. I am.

15 Q. What is the Fund's understanding of
16 what that means?

17 A. The Fund's understanding is that we
18 are seeking to get a judgment for everyone
19 involved that -- the class holders at this current
20 time, and everyone benefits from that, if, in
21 fact, it's successful.

22 Q. Who is the everyone that you referred
23 to in your prior testimony?

24 A. The class holders.

25 Q. And what's your understanding of --

1 TODD NEILSON

2 what are the -- how are the class holders defined?

3 MS. POSNER: Objection, calls for a
4 legal conclusion.

5 A. Anyone that were shareholders of that
6 particular investment during the time that's in
7 question.

8 Q. You see Topic 4 says your role and
9 participation --

10 A. I'm sorry, I'm having difficulty
11 hearing you.

12 Could you repeat that, please?

13 Q. Sure.

14 Can you hear me now?

15 A. Yes. You're a little bit farther from
16 the mic. It was better when you were closer, that
17 was all.

18 Q. Is this better?

19 A. Yes. Thank you.

20 Q. Topic 4 says your role and
21 participation in the class action.

22 Do you see that?

23 A. I do see that, yes.

24 Q. What is the Fund's understanding of
25 its role in this class action?

1 TODD NEILSON

2 A. Our role is to represent the class and
3 to try to do what's best and get the best return
4 and settlement for all the class and stakeholders,
5 not just us.

6 Q. And how has the Fund gone about doing
7 that to date?

8 MS. POSNER: Objection.

9 Do you understand the question?

10 THE WITNESS: I do not.

11 Q. Well, how has the Fund attempted to
12 satisfy its role in this class action so far?

13 MS. POSNER: Objection.

14 If you understand.

15 A. I guess by applying to be the lead
16 plaintiff in the case.

17 Q. Anything else?

18 A. Not that I can think of.

19 MR. SCHWARTZ: Okay.

20 Chassity, we can bring that document
21 down. We'll probably go back to it later.

22 MS. POSNER: Jed, do you want to --
23 are you moving on to a new topic? Do you
24 want to take a quick break?

25 MR. SCHWARTZ: Sure. That's fine.

1 TODD NEILSON

2 We can go off the record.

3 VIDEOGRAPHER: We're going off the
4 record at 10:55 a.m.

5 (Recess.)

6 VIDEOGRAPHER: We're back on the
7 record at 11:08 a.m.

8 BY MR. SCHWARTZ:

9 Q. Mr. Neilson, is there anyone in the
10 room with you as you're testifying?

11 A. No.

12 Q. Are you looking at anything other than
13 the screen that has the litigation --
14 LiveLitigation app?

15 A. I am not.

16 Q. Do you have any documents with you?

17 A. No, sir.

18 Q. Are you able to see your testimony as
19 it's being given?

20 A. Am I able to see it? What do you
21 mean? I don't -- you mean, on a video, on video
22 here?

23 Q. Well, are you able to see a transcript
24 of your testimony?

25 A. No.

1 TODD NEILSON

2 THE WITNESS: Laura, you're on mute.

3 MS. POSNER: Oh, sorry.

4 He would have to hit that scroll thing
5 if you want him to look at it.

6 MR. SCHWARTZ: No, I don't. I just
7 wanted to know if he was looking at it.

8 THE WITNESS: To that point, I would
9 like to amend my previous testimony.

10 I talked to my attorney during the
11 break, if possible, and, you know, it was
12 brought to my attention, because Tara Chupka
13 is an in-house attorney, I had conversation
14 with her about the complaint and about
15 reading the document, and at that time, in
16 preparation for today's deposition, she did,
17 in fact, read those -- all of the documents,
18 and she was responsible for putting together
19 all of the discovery evidence.

20 So she did, in fact, read the
21 complaint, as did Brian Burrows, according
22 to Tara, as previously stated. So I was ...

23 BY MR. SCHWARTZ:

24 Q. Okay. What did Ms. -- what else did
25 Ms. Chupka tell you during this conversation?

1 TODD NEILSON

2 MS. POSNER: Objection.

3 He's -- the reason he's having a
4 difficult time answering these questions is
5 she has attorney-client communications with
6 him as general counsel to the Fund.

7 So if you want to ask general
8 questions, he can answer, but he can't talk
9 about the substance of their questions -- of
10 their conversations.

11 MR. SCHWARTZ: Well, he just disclosed
12 the substance of the conversation, so I want
13 to know everything else that was discussed
14 during that conversation.

15 MS. POSNER: No, he did not disclose
16 the substance of the conversation.

17 You had asked him whether he knew, and
18 he was explaining why he couldn't get into
19 the substance of that conversation but what
20 she had confirmed for him in preparation for
21 today's deposition.

22 Q. Mr. Neilson, you just testified about
23 a conversation with Ms. Chupka, right?

24 A. I did.

25 Q. When did that conversation take place?

1 TODD NEILSON

2 A. That was -- that took place a few
3 weeks ago prior to me taking over and for seeing
4 this stuff moving forward to make sure I was fully
5 aware of all that had been done up until that
6 point.

7 Q. What else did Ms. Chupka tell you
8 during that conversation?

9 MS. POSNER: Don't disclose any
10 privileged communications.

11 If you're asking him about his
12 communications with regard to preparing for
13 the -- for today's deposition, that's a
14 different story, so if you could clarify,
15 please.

16 MR. SCHWARTZ: No, I don't -- I'm not
17 going to change the question.

18 If you're going to instruct him not to
19 answer, you can do that, but I want to make
20 sure I have a clear record.

21 I'm asking the witness to tell me
22 everything else that he discussed with
23 Ms. Chupka during this conversation that
24 he's already testified to.

25 MS. POSNER: Objection.

1 TODD NEILSON

2 If you can testify as to the topics
3 you discussed with Tara but not the
4 substance, that is fine.

5 A. Essentially, what my responsibilities
6 would be with communicating with Cohen Milstein,
7 Laura, making sure that I reviewed all the
8 documents and what has to happen moving forward in
9 the event that my interaction would be required to
10 review documents to make sure that Laura and her
11 firm were doing everything they needed to do on
12 their end as it applies to this case.

13 Q. What other topics were discussed?

14 A. No other topics other than those that
15 we've just mentioned as far as the filings, the
16 discovery, and everything else.

17 Q. So was -- this was the conversation
18 you had with Ms. Chupka where you learned about
19 your responsibilities and your role in this
20 litigation going forward?

21 A. Yes, what I would be responsible to do
22 and what was being asked of me.

23 Q. Were you aware of this litigation
24 before that conversation with Ms. Chupka?

25 A. No.

1 TODD NEILSON

2 Q. So did you ask Ms. Chupka what the
3 litigation was about?

4 A. Yes.

5 Q. Okay. And what did she say?

6 A. That we're filing to be lead plaintiff
7 in a class action suit based on the SCANA
8 investment against Deloitte & Touche.

9 Q. Were you aware of the SCANA investment
10 at the time?

11 A. I was not.

12 Q. Did you ask her what the SCANA
13 investment was?

14 A. Yes. After we got into that, yes.

15 Q. And what did she say?

16 A. I read the documents. I was given the
17 documents at that point to go through and try to
18 get a better understanding of what it was.

19 Q. Did you know who Deloitte & Touche was
20 at that time?

21 A. No.

22 Q. Did you ask who they were?

23 A. At that point, I read the complaint --
24 some of the complaint. I had it in front of me,
25 so I kind of knew who it was at that point.

1 TODD NEILSON

2 I don't recall if she said who they
3 were, and given the brief synopsis, I'm kind of
4 remiss as far as the time frame with that.

5 Q. Did you have the complaint in front of
6 you when you had this conversation with
7 Ms. Chupka?

8 A. I don't recall.

9 Q. So did you ask Ms. Chupka what
10 Deloitte had done wrong?

11 A. I did not.

12 Q. So this is the conversation in which
13 Ms. Chupka told you you were going to have
14 significant responsibilities in connection with
15 the litigation, right?

16 A. Yes.

17 Q. And she told you that the claims were
18 going to be asserted against Deloitte & Touche,
19 right?

20 A. Yes.

21 Q. And you didn't ask any question as to
22 what those claims were or what Deloitte was
23 accused of doing wrong?

24 MS. POSNER: Objection, misstates his
25 testimony.

1 TODD NEILSON

2 A. At that point, not to Ms. Chupka, no.
3 I was handling that stuff directly with Laura and
4 my counsel.

5 Q. So at what point did you become aware
6 of what the Fund's claims were against Deloitte?

7 A. When I read the complaint.

8 Q. How long after this conversation with
9 Ms. Chupka did you read the complaint?

10 A. I -- I can't honestly answer that. I
11 don't know.

12 Right around the same time. There
13 wasn't a lot of time that lapsed.

14 Q. What's the Fund's understanding of
15 what Deloitte's role was with respect to SCANA
16 during the class period?

17 A. Could you repeat that question,
18 please?

19 Q. Sure.

20 What's the Fund's understanding of
21 what Deloitte's role was with respect to SCANA
22 during the class period?

23 A. They were the auditor of the project
24 and all of the financials for SCANA.

25 Q. And when you say the "project," what

1 TODD NEILSON

2 do you mean?

3 A. The building of the nuclear power
4 plant in South Carolina.

5 Q. What's your basis for your statement
6 that Deloitte was the auditor of the nuclear power
7 plant project?

8 A. 'Cause they're listed as the auditor
9 for the project in the documentation that I've
10 read.

11 Q. What documentation are you referring
12 to?

13 A. All of the brief, the binder put
14 together stating all the stuff that -- all the
15 discovery and everything and the nature of the
16 complaint against Deloitte.

17 Q. So the documentation you're referring
18 to is the complaint, correct?

19 A. The complaint and everything else that
20 was put together and given to me for my review to
21 familiarize myself.

22 Q. Okay. What were those documents that
23 were given to you for your review?

24 A. It was a copy of the complaint and all
25 the exhibits and the list of questions that you

1 TODD NEILSON

2 were going to be going through and asking me
3 today.

4 Q. Were there any other documents that
5 you're aware of that identified Deloitte as the
6 auditor of the nuclear power plant construction
7 project?

8 A. Not that I'm aware of, no, not that
9 I've seen.

10 Q. Has the Fund -- withdrawn.

11 What is the Fund's understanding of
12 what Deloitte's responsibilities were as the
13 purported auditor of the nuclear project?

14 A. To accurately --

15 MS. POSNER: Objection.

16 THE WITNESS: I'm sorry, Laura?

17 MS. POSNER: Objection.

18 If you can answer, go ahead.

19 A. Just to report back to the
20 stakeholders the status of the investment project,
21 the construction, as previously stated.

22 Q. Who are the stakeholders?

23 A. Everybody -- all the class holders,
24 the people that own common stock in the company
25 that were defrauded because of this.

1 TODD NEILSON

2 Q. Is it the Fund's understanding that
3 Deloitte did, in fact, report on the status of the
4 construction project?

5 A. Can you repeat that question, please?

6 Q. Is it the Fund's understanding that
7 Deloitte did, in fact, report on the status of the
8 construction project?

9 A. It is our understanding, yes.

10 Q. And what document contains that report
11 that you just referred to?

12 A. I haven't seen a document saying that
13 they reported on it.

14 Q. What is the Fund's basis for its
15 testimony that Deloitte did, in fact, report on
16 the status of the construction project?

17 MS. POSNER: Objection, calls for a
18 legal conclusion and is an improper
19 contention interrogatory.

20 But if you can answer. Go ahead.

21 A. As the auditors of this project, no
22 different than what my obligation is as a trustee,
23 you have a fiduciary responsibility to report to
24 the class holders where this -- what the status of
25 this project is.

1 TODD NEILSON

2 And I don't -- and we don't feel that
3 that has happened, and hence, it's where we're at
4 in this case.

5 Q. So I'm confused. You just said you
6 don't feel that that has happened.

7 You don't feel that what has happened?

8 Because I thought you testified that
9 the Fund did, in fact, believe that Deloitte
10 reported on the status of the project.

11 MS. POSNER: Objection.

12 You can answer.

13 A. I don't believe that they did their
14 due diligence in reporting it back to everyone.

15 Q. Okay. So look, I want to make sure
16 that I understand your testimony.

17 You testified that it's the Fund's
18 understanding that Deloitte did, in fact, report
19 on the status of the construction project.

20 Do you recall testifying to that a
21 minute ago?

22 A. Yes.

23 Q. Now, do you want to change that
24 testimony or is that still your testimony?

25 A. No, it's still my testimony.

1 TODD NEILSON

2 I guess you're reading it right from
3 there, so, yes.

4 Q. And then I asked you: Is there a
5 document that contains that report?

6 And you said you haven't seen any
7 document that they reported on it.

8 Do you recall that?

9 A. I do.

10 Q. So now I'm asking, since it apparently
11 is not in a document, what is the Fund's basis for
12 the testimony that Deloitte did, in fact, report
13 on the status of the construction project?

14 MS. POSNER: Objection, misstates his
15 testimony.

16 He didn't say he -- that there are no
17 such document existing. He said he hasn't
18 seen any documents.

19 Q. Are you aware of a document that
20 exists that you haven't seen?

21 A. I am aware that there have been
22 several judgments against SCANA, the managers of
23 SCANA defrauding people out of -- you know, lying
24 under testimony, you know, there's -- the list
25 goes on and on. There's a whole -- this is just

1 TODD NEILSON

2 another in the long line of things that went on
3 with -- as it applies to the SCANA project.

4 Q. Is SCANA Corporation a defendant in
5 this case?

6 A. No.

7 Q. Is any officer or director of SCANA a
8 defendant in this case?

9 A. No, not to my knowledge.

10 Q. So you're aware, apparently, of some
11 judgment against SCANA. Is that correct?

12 A. Multiple, I believe, yes.

13 Q. And is it your testimony that these
14 judgments are, in fact, the documents in which
15 Deloitte reported on the status of the
16 construction project?

17 MS. POSNER: Objection, misstates his
18 testimony.

19 A. I don't know. I'm not certain of
20 that.

21 Q. Okay. So I just want to understand,
22 what is the fact or facts that the Fund is relying
23 on to support the testimony that Deloitte did, in
24 fact, report on the status of the construction
25 project?

1 TODD NEILSON

2 MS. POSNER: Objection, improper
3 contention interrogatory.

4 If you can answer, feel free.

5 A. I -- I have no -- I have not seen any
6 documents included in my binder stating that fact.

7 Q. I'm just asking as broad as can be, is
8 the Fund aware of any fact that supports the
9 testimony that you just gave?

10 MS. POSNER: Objection, other than
11 what he's testified to.

12 If you can answer, feel free.

13 MR. SCHWARTZ: I don't know what that
14 means.

15 Q. I'm just asking as broad as a question
16 as possible, because I don't think you've
17 identified a single fact.

18 So is the Fund aware of any fact that
19 supports your under-oath testimony that it is the
20 Fund's understanding that Deloitte did, in fact,
21 report on the status of the construction project?

22 MS. POSNER: Objection. It's an
23 improper contention interrogatory.

24 But if you can answer, go ahead.

25 A. Yeah, I don't have an answer for that.

1 TODD NEILSON

2 I don't know.

3 Q. Now, you mentioned -- withdrawn.

4 You testified earlier about fiduciary
5 responsibilities to report to class holders.

6 You recall that testimony?

7 A. Yes.

8 Q. Is it the Fund's testimony that
9 Deloitte has some sort of fiduciary responsibility
10 to the class members?

11 MS. POSNER: Objection, calls for a
12 legal conclusion.

13 A. I would just think, as an auditor,
14 that they were no different than an IRS audit that
15 they would do, go dig deep to make sure that
16 everything was on the up and up, just as what my
17 understanding is of what an auditor does, but
18 that's just from a electrician's perspective.

19 Somebody that audits is somebody that
20 goes through and looks at every last detail to
21 make sure everything is in order, and it appears
22 that that wasn't the case here.

23 Q. I just want to understand.

24 Is it the Fund's position that
25 Deloitte owes a fiduciary duty to any of the class

1 TODD NEILSON

2 members?

3 MS. POSNER: Objection, calls for a
4 legal conclusion.

5 But if you can answer, go ahead.

6 A. In the Fund's opinion, yes.

7 Q. Okay. And what's the basis for the
8 Fund's opinion that Deloitte owes a fiduciary duty
9 to the class members?

10 MS. POSNER: Objection, calls for a
11 legal conclusion.

12 A. As somebody who's an auditor, they
13 should be able to go through and see if there's
14 any kind of indiscretions, if there's any kind of
15 things that don't add up, deadlines that aren't
16 going to be met. That's the whole purpose of
17 somebody performing an audit.

18 Q. And if it turns out that the Fund is
19 wrong and Deloitte doesn't, in fact, owe a
20 fiduciary duty to the class members, does that
21 change your view as to the claims asserted?

22 A. No, not at all.

23 MS. POSNER: Objection.

24 Q. Why not?

25 A. Just as I previously stated what my

1 TODD NEILSON

2 understanding is an auditor's job to do.

3 Q. Now, is it your -- withdrawn.

4 Is it the Fund's understanding that
5 Deloitte was specifically retained to audit the
6 schedule of the nuclear project?

7 A. Specifically scheduled, no. To audit
8 everything, the financials, everything as its --
9 as a whole, not just the schedule.

10 Q. When you say the "financials," what do
11 you mean?

12 A. Making sure they had enough money to
13 complete the project, making sure that everything
14 was going as planned and everything was getting
15 reported back to the investors, you know, the
16 stakeholders, honestly and timely.

17 Q. And so when you're referring to
18 financials, you're referring to the financials of
19 the construction project. Is that right?

20 MS. POSNER: Objection, misstates his
21 testimony.

22 A. Not just the construction project, as
23 per the whole investment. A lot of it was tied --
24 a lot of the profits, what they were hoping for,
25 was tied to the construction of the reactors based

1 TODD NEILSON

2 on the need -- the demand for power -- additional
3 power in that area, and the over a billion
4 dollars' worth of tax credits that were tied into
5 it being completed in a timely fashion, which
6 would have, in turn, been more profitable for all
7 the stakeholders and class holders.

8 Q. What's the investment that you have
9 referred to several times?

10 A. What's the investment?

11 Q. Yeah. You referred to, for example,
12 in your last question -- in your last answer, you
13 said, "Not just the construction project, as per
14 the whole investment."

15 What do you mean by the "whole
16 investment"?

17 A. Everything that's part of the SCANA
18 investment in that portfolio from LSV.

19 Q. So is it your testimony that the
20 Fund's understanding is that Deloitte was
21 responsible for auditing everything with respect
22 to SCANA?

23 MS. POSNER: Objection, calls for
24 expert testimony.

25 But if you can answer, go ahead.

1 TODD NEILSON

2 A. I -- I'm not an expert on that. Like
3 I said, I would just think that -- yes, as part of
4 that, yes.

5 Q. Now, you said it was the Fund's
6 understanding that these tax credits would have
7 made things more profitable for all stakeholders
8 and class holders.

9 What did you mean by that?

10 A. According -- according to all the
11 information that I've read in the complaint, that
12 there was \$1.2 billion, somewhere in the
13 neighborhood of that, in tax credits available
14 if -- if the project was completed and deadlines
15 were met and it was up and running in the given
16 amount of time, that there was federal tax credits
17 involved, and that wasn't met. Those dates
18 weren't met.

19 Q. What's the Fund's understanding as to
20 who would receive the benefit of those tax
21 credits?

22 A. The Fund's understanding is anyone
23 that was a stakeholder in that investment and all
24 the people that held that investment in their
25 portfolios, not just us --

1 TODD NEILSON

2 Q. So when you say "stakeholder" --

3 A. -- as a Fund.

4 Q. -- you mean investors in SCANA stock?

5 A. Yes.

6 Q. So it's the Fund's understanding that
7 the investors in SCANA stock would have received
8 the benefit of those tax credits?

9 A. No, that they would -- their stock
10 would become more valuable because of those tax
11 credits.

12 Q. What's the Fund's understanding as to
13 whether the economic benefit of those tax credits
14 would have been passed on to SCANA's rate payors?

15 MS. POSNER: Objection.

16 If you can answer, go ahead.

17 A. I'm not an expert in that category, so
18 I don't really know. I would just -- it would
19 just be more valuable. You know, just from my
20 perspective, it would seem it would be more
21 valuable from the Fund's perspective because it
22 would be more profitable, and that profit
23 generally gets passed on to its stakeholder.

24 Q. What's the basis for the Fund's
25 understanding that these tax credits would allow

1 TODD NEILSON

2 SCANA to be more profitable?

3 MS. POSNER: Objection, asked and
4 answered.

5 A. Asked and answered, right, that it
6 would make that stock more valuable because you're
7 getting \$1.2 billion tax credit on the initial
8 investment to credit, so it would be -- it would
9 help fund it -- self-fund it.

10 MR. SCHWARTZ: Okay. Let's move to
11 Tab 2, Chassity, and we'll mark it as
12 Exhibit 16.

13 THE WITNESS: I heard somebody's dogs
14 barking.

15 MR. SCHWARTZ: That's mine.

16 THE WITNESS: There must be another
17 dog walking by.

18 (Exhibit 16, Declaration of Todd
19 Neilson in Support of Supplemental Motion
20 for Class Certification, Appointment of
21 Class Representative, and Appointment of
22 Class Counsel, was marked for identification
23 at this time.)

24 BY MR. SCHWARTZ:

25 Q. Okay. Mr. Neilson, you should have

1 TODD NEILSON

2 before you a document that's been marked as
3 Exhibit 16. It's titled, "Declaration of Todd
4 Neilson in Support of Supplemental Motion for
5 Class Certification, Appointment of Class
6 Representative, and Appointment of Class Counsel."

7 Do you see that?

8 A. I do.

9 Q. Have you seen this document before?

10 A. I have.

11 Q. And is that your signature on the
12 fourth page of the document?

13 A. It is.

14 Q. Okay.

15 When you or -- when you signed this,
16 did you understand that you were signing it under
17 oath?

18 A. I did.

19 Q. And you believed then that all the
20 statements in here were true and accurate?

21 A. I did.

22 Q. Okay. Who wrote this declaration?

23 A. Who wrote it?

24 Somebody from Cohen Milstein, I
25 believe.

1 TODD NEILSON

2 Q. Did you review it before you signed
3 it?

4 A. I read through it, yes.

5 Q. And you were comfortable that
6 everything was -- was true and accurate when you
7 signed on it?

8 A. Yes.

9 Q. I'm going to go back to page 1.

10 Are you at page 1?

11 A. I am now, yes.

12 Q. Okay. And do you see that paragraph 1
13 refers to the Local 98 Pension Fund?

14 A. I do.

15 Q. And that's the Fund that we've been
16 talking about today, right?

17 A. Yes.

18 Q. And then paragraph 3 refers to the
19 Local 98 Union.

20 Do you see that?

21 A. Yes.

22 Q. And that's the Union that we've been
23 discussing, right?

24 A. Yes.

25 Q. Now, paragraph 3 says that the Union

1 TODD NEILSON

2 and the Fund are two distinct legal and corporate
3 entities with different governing structures.

4 Do you see that?

5 A. I do.

6 Q. What is the governing structure of the
7 Fund?

8 A. The Fund is made up of eight trustees,
9 four management trustees. One is a management
10 chairman, along with three trustees.

11 And on the Union side, we currently
12 have one chairman and two trustees with one
13 vacancy.

14 Q. And what is the difference --

15 A. Due to a recent retirement -- sorry --
16 due to a recent retirement last year, that last
17 seat hasn't been filled yet.

18 Q. What is the difference between a
19 management trustee and a Union trustee?

20 A. A Union trustee is -- they're members
21 of the Union that are sitting on the Fund, and the
22 management trustees are members of our
23 contractors' association, which is NECA. It's the
24 National Electrical Contractors Association.

25 The Penn, Jersey, Delaware chapter,

1 TODD NEILSON

2 which is our regional chapter, they have four
3 contractor trustees that sit on that board as
4 well. They weigh in equally on any kind of
5 changes to the formats and stuff that we do.

6 Q. Who are the four management trustees?

7 A. Jeff Scarpello, Jerry Rothstein, Tom
8 Moore, and the fourth one off the top of my head,
9 I'm just -- I can't think of the fourth one off
10 the top of my head.

11 Q. Is it Charles McDonald?

12 A. Charlie McDonald, yes. Thank you,
13 yes. Thank you.

14 Apologize. I'm a little nervous.
15 I've never done this before.

16 Thank you.

17 Q. What role have any of the four
18 individuals that you just mentioned played with
19 respect to this litigation?

20 A. None.

21 Q. Why?

22 A. Because I took over for -- as the lead
23 plaintiff -- as the representation of the Fund in
24 this litigation.

25 Q. Who asked you to do that?

1 TODD NEILSON

2 A. Tara Chupka, who's the attorney for
3 the Fund, in-house counsel.

4 Q. And did she do this -- do that in the
5 same conversation that we talked about before?

6 A. I don't recall if it was the same
7 conversation, but it was a conversation about
8 this.

9 Q. What did Ms. Chupka tell you as to why
10 you were being asked to take over as the
11 representative?

12 A. They asked me to take over this
13 because Brian was stepping away from it.

14 Q. Did you ask why Mr. Burrows was
15 stepping away from it?

16 MS. POSNER: Objection.

17 Are you asking if he asked Tara?

18 A. I didn't ask her why. They asked me
19 to do it, if I would mind doing it, and I just did
20 it.

21 Q. Did anybody tell you why Mr. Burrows
22 was stepping away from this litigation?

23 MS. POSNER: Objection, asking for
24 attorney-client privileged communications.

25 If you can answer without disclosing

1 TODD NEILSON

2 attorney-client privileged communications.

3 A. I cannot answer without violating
4 attorney-client privilege.

5 Q. Who are the three Union trustees for
6 the Fund?

7 A. Brian Burrows, Michael Masculli, and
8 Mike Hnatkowsky.

9 Q. And you testified that Mr. Burrows is
10 the president of the Union. Is that correct?

11 A. He is, yes.

12 Q. And who is Mr. Masculli?

13 A. Mr. Masculli is recording secretary
14 for the Union and the trustee.

15 Q. As the president of the Fund, does
16 Mr. Burrows have the ability to fire you from your
17 position -- withdrawn.

18 As the president of the Union, does
19 Mr. Burrows have the ability to fire you from your
20 position at the Union?

21 A. No.

22 Q. Does Mr. Burrows have the ability to
23 fire Mr. Masculli?

24 A. No.

25 Q. Is it -- is it the case that only

1 TODD NEILSON

2 Mr. Dougherty has the ability to fire you and
3 Mr. Masculli?

4 A. No. He can only -- I can only be
5 fired as a business agent by Business Manager
6 Dougherty. I'm an elected officer of the Union,
7 as is Michael Masculli, so his position as
8 recording secretary, he holds that until he is
9 voted out of office by the membership. And
10 Mr. Masculli is not a full-time employee of Local
11 Union 98, so he cannot be fired. He is an elected
12 officer, as am I in my secondary role.

13 Q. Do you or Mr. Masculli receive any
14 compensation in your roles as elected officers of
15 the Union?

16 A. Me being an elected officer, I don't
17 get compensated because I am a full-time officer;
18 however, Mr. Masculli does get minor compensation
19 for attending meetings as such.

20 Q. Okay --

21 A. It's on a per diem basis, to add to
22 that, and he gets \$20 per meeting attended, and I
23 believe he gets -- and don't quote me on it --
24 about \$150 per quarter, something along those
25 lines, is what his compensation is for being the

1 TODD NEILSON

2 recording secretary.

3 Q. Okay. And so focusing on your --
4 sorry, withdrawn.

5 You are a business manager. That's
6 the position for which you get paid, correct?

7 A. No. I am a business representative.

8 Q. So you're -- as a business
9 representative, that's the position for which you
10 get paid, correct?

11 A. Correct. And by virtue of that, I'm
12 not allowed to be duly compensated for my role --
13 my position as executive board because I am a
14 full-time personnel getting -- receiving full-time
15 pay.

16 Q. And is it -- is it the case that only
17 Mr. Dougherty is able to fire you from your
18 position as the business representative?

19 A. Yes.

20 Q. Does Mr. Dougherty have any role with
21 respect to the Fund?

22 A. No.

23 Q. Do you know someone named Michael
24 Neill?

25 A. Yes.

1 TODD NEILSON

2 Q. Does he have any role with respect to
3 the Fund?

4 A. No.

5 Q. Do you know someone named Marita
6 Crawford?

7 A. Yes.

8 Q. Does she have any role with respect to
9 the Fund?

10 A. No.

11 Q. Do you know someone named Niko
12 Rodriguez?

13 A. Yes.

14 Q. Does he have any role with respect to
15 the Fund?

16 A. No.

17 Q. Do you know someone named Brian
18 Viacca?

19 A. Yes.

20 Q. Does he have any role with respect to
21 the Fund?

22 A. No.

23 Q. Does the Fund have an auditor?

24 A. Yes.

25 Q. Who is the auditor?

1 TODD NEILSON

2 A. I'm not sure who it is. It's one of
3 the -- one of the big ones.

4 Q. Is it Deloitte?

5 A. It is not.

6 Q. Does the Board of Trustees on which
7 you sit oversee the Fund's auditor?

8 A. Yes. They report to us orally. They
9 come to our quarterly meetings.

10 Q. And what is the responsibilities of
11 the Fund's auditor?

12 A. To audit the Fund and the financials,
13 to make sure everything is in order financially,
14 and that the -- that the numbers match.

15 Everything at the end of the day is what it
16 appears to be.

17 Q. Does the Fund execute an engagement
18 letter with its auditor?

19 MS. POSNER: Objection, beyond the
20 scope of the 30(b) (6).

21 Can you identify what -- what topic
22 this is in reference to -- not you, Todd --
23 Mr. Schwartz.

24 MR. SCHWARTZ: Well, are you going to
25 direct him not to answer?

1 TODD NEILSON

2 MS. POSNER: I'm asking you to
3 identify for me which topic in your notice
4 this question goes to.

5 MR. SCHWARTZ: I'm not going to do
6 that. I'm just going to ask him the
7 question, and if you're going to direct him
8 not to answer, then that will be what it is.

9 MS. POSNER: You're refusing to
10 identify which topic in the 30(b) (6) notice
11 your question goes to?

12 MR. SCHWARTZ: Yeah, I'm not going to
13 go through and justify every question I ask
14 based on the topics.

15 If you want to instruct him not to
16 answer, it's your position that it's outside
17 the scope, you're entitled to do that.
18 You're entitled to instruct him not to
19 answer, and I'll ask him if he's going to
20 follow his counsel's instruction.

21 MS. POSNER: I haven't asked you do
22 that with regard to every question. I've
23 asked you with regard to this question to
24 please identify which one of the topics of
25 the 30(b) (6) the question pertains to, and

1 TODD NEILSON

2 quite frankly, this whole line of
3 questioning.

4 BY MR. SCHWARTZ:

5 Q. Are you going to answer the question?

6 A. What was the question again?

7 MS. POSNER: Just to be clear, before
8 you go on, you're refusing to identify the
9 topic that your question goes to?

10 Q. Does the Fund execute an engagement
11 letter with its auditor?

12 MS. POSNER: Objection.

13 Please identify the topic in the
14 30 (b) (6) this question goes to.

15 MR. SCHWARTZ: Just -- if you're going
16 to instruct him not to answer, do that.
17 Let's not bog this down.

18 MS. POSNER: I'm going to ask the
19 court reporter to mark this portion of the
20 transcript.

21 If you can answer the question, you
22 can go ahead, but I'm going to stop this
23 line of questioning if it goes any further.

24 A. I'm not certain. I don't know.

25 Q. Turning to page 2 of Exhibit 16, do

1 TODD NEILSON

2 you see paragraph 5?

3 A. I do.

4 Q. Here it states that the Fund is a
5 Taft-Hartley-defined benefit plan.

6 Do you see that?

7 A. I do.

8 Q. What does that mean?

9 A. That it's a defined -- defined --
10 defined benefit plan, and it's a pension fund that
11 is under scrutiny of the rules of the Department
12 of labor and can only be invested in -- certain
13 types of investments are allowed.

14 Q. Now, in that same paragraph, you
15 write: "The Department of Labor can file a
16 complaint to enjoin acts and practices that
17 constitute a breach of fiduciary duty, including
18 removal of a fiduciary."

19 Do you see that?

20 A. I do see that, yes.

21 Q. Has that happened?

22 MS. POSNER: Ever?

23 Can you clarify your question? Are
24 you asking with regard to this Fund and at
25 any point in time?

1 TODD NEILSON

2 MR. SCHWARTZ: Yes.

3 A. Not to my -- not since I've been the
4 trustee on the plan.

5 Q. Do you see paragraph 6?

6 A. I do.

7 Q. The last sentence says, "Pursuant to
8 Section 3.15 of the Local Pension Plan Trust Plan,
9 the Board of Trustees is authorized to take action
10 to remove any trustee by a majority vote in the
11 event that a trustee violates ERISA."

12 Is that accurate?

13 A. Yes.

14 Q. Is that the only ground on which a
15 trustee may be removed?

16 A. I don't have any --

17 MS. POSNER: Objection, calls for a
18 legal conclusion.

19 A. I don't have any knowledge of any
20 trustee being removed, so I'm sure there were --
21 if something were to come up and we would take
22 a -- if somebody -- there was any wrongdoing
23 involved, as trustees, we have a fiduciary
24 responsibility to all the people in there to make
25 sure that we protect the assets of the Fund and

1 TODD NEILSON

2 our members.

3 So if somebody was doing something
4 detrimental to the Fund and to the members, then
5 we would have to do our due diligence to have that
6 person removed, if that were the case.

7 Q. In your time as trustee of the Fund,
8 are you aware of anyone that has taken action that
9 was detrimental to the Fund or its members?

10 A. No.

11 Not as it applies to the current
12 trustees, no.

13 Q. What about as it applies to people who
14 are not the current trustees?

15 A. I -- I don't have any reason to
16 believe that. I don't know who, about past
17 trustees. I only know who's on there since I've
18 been on there. That's all I can speak to.

19 Q. Do you see paragraph 7?

20 A. I do.

21 Q. The second sentence says, "The
22 indictment involves criminal allegations against
23 certain individuals for conduct that allegedly
24 occurred in their employment with the leadership
25 of the Local 98 Union."

1 TODD NEILSON

2 Do you see that?

3 A. I do.

4 Q. What is your understanding of the
5 indictment's allegations?

6 MS. POSNER: Objection, beyond the
7 scope of the 30(b) (6), and the pending
8 motion for a protective order.

9 And I'm going to instruct the witness
10 not to answer.

11 MR. SCHWARTZ: So, Laura, just so we
12 cannot burden the record, will it be your
13 instruction that Mr. Neilson is not -- will
14 not be answering any questions related to
15 the indictment or the allegations in the
16 indictment or the labor complaint or the
17 allegations in the labor complaint?

18 MS. POSNER: That is correct, and
19 consistent with our e-mail to you from a few
20 days ago --

21 MR. SCHWARTZ: Okay.

22 MS. POSNER: -- and as is set forth in
23 our pending motion for a protective order.

24 MR. SCHWARTZ: Okay. So look, I don't
25 want to go through the litany of questions

1 TODD NEILSON

2 just to have you instruct him not to answer.

3 So that I can preserve the record, can
4 we have an agreement that, you know,
5 whatever the outcome of that motion for a
6 protective order, that, if we were to
7 prevail, I don't need to have asked every
8 single question here so that we can avoid
9 that?

10 MS. POSNER: Agreed.

11 MR. SCHWARTZ: Okay.

12 BY MR. SCHWARTZ:

13 Q. Okay. Mr. Neilson, do you see
14 paragraph 10 on page 3 of your declaration?

15 A. I'm sorry?

16 Q. Yes. Do you see paragraph 10 of your
17 declaration?

18 A. I do.

19 Q. It says, "The Local 98 Pension Fund
20 Board of Trustees is aware of the indictment and
21 labor case and has not taken any action to remove
22 Mr. Burrows from his role."

23 Do you see that?

24 A. I do see that, yes.

25 Q. What was the basis for the board's

1 TODD NEILSON

2 decision not to remove Mr. Burrows from his role?

3 A. Those are allegations. Those are not
4 convictions. No reason to remove him.

5 Q. Did the board of the Fund undertake
6 any investigation of the allegations?

7 MS. POSNER: Objection.

8 If you can -- if you can testify to
9 that without disclosing attorney-client
10 privileged communications, that's fine. But
11 if not, please don't disclose
12 attorney-client privileged communications.

13 A. We were made aware of it, and we were
14 reassured by counsel that it wouldn't affect the
15 Fund and the Fund was not under scrutiny, and we
16 left it at that.

17 Q. Paragraph 11 says, "The Department of
18 Labor is also aware of the indictment and labor
19 case and has not taken any action to remove
20 Mr. Burrows from his role."

21 Do you see that?

22 A. I do see that.

23 Q. Do you understand that to still be the
24 case as you sit here today?

25 A. I have no reason to believe it not to

1 TODD NEILSON

2 be. It's what's stated in your -- to my
3 knowledge, no, there's been no other action taken,
4 to the Fund's knowledge.

5 Q. Can you turn to the next page?

6 Are you there?

7 A. Yes.

8 Q. And do you see paragraph 13?

9 A. I do.

10 Q. That states, in part, "The sole
11 authority to make all decisions with regard to
12 this action on behalf of the Local 98 Pension Fund
13 has been delegated to me."

14 Do you see that?

15 A. I do.

16 Q. Why were you chosen as the person to
17 whom sole authority to make decisions was
18 delegated?

19 MS. POSNER: Objection.

20 If you can answer that without
21 disclosing attorney-client privileged
22 communications, you can go ahead.

23 A. I believe that I was asked because I'm
24 a full-time person for the Union.

25 The only other Union trustee works in

1 TODD NEILSON

2 the field, and if they would have had to take time
3 off, it would have -- they would have had to be
4 compensated for their time off, and that would
5 have put additional strain on the Fund because
6 they would have had to have done that, and that
7 would have come out of the Fund's money, to
8 reimburse for his salary.

9 So I believe that was why I was asked
10 instead of him.

11 Q. Did the Fund consider having one of
12 the management trustees oversee the litigation?

13 A. No.

14 Q. Why not?

15 A. Because it's a Union Pension Fund
16 which we're participants in, and the management
17 trustees are not.

18 So these -- also, these management
19 trustees, they run contracting businesses.
20 They're electrical contractors. They may not
21 necessarily have the time to put forth the effort
22 that this took, and to ask them to do that
23 undertaking would be a burden on some of those
24 folks.

25 Q. Was there any discussion at the --

1 TODD NEILSON

2 among the trustees as to who would be given sole
3 authority to make all decisions with respect to
4 this litigation?

5 A. No.

6 Q. Was the decision to have you take on
7 that responsibility documented by the Fund in any
8 way?

9 A. No, not to my knowledge.

10 Q. Has there been any vote or resolution
11 by the trustees of the Fund to have you take over?

12 A. No.

13 Q. Do the management trustees know that
14 you've taken over this litigation?

15 A. I don't know what counsel has advised
16 them of, so I don't know.

17 Q. Sitting here testifying on behalf of
18 the Fund, are you aware of whether or not the
19 management trustees know that you have taken over
20 for Mr. Burrows?

21 A. I do not know that.

22 Q. Now, Mr. Burrows is the president of
23 the Fund, correct?

24 A. No, incorrect. He's president of the
25 Union, not president of the Fund.

1 TODD NEILSON

2 He is a cochairman of the Fund. He
3 and Jeff Scarpello are cochairmen. One management
4 side, one Union side.

5 Q. And I believe you testified before, as
6 cochairman of the Fund, he oversees all of the
7 funds that the Pension Fund has. Is that correct?

8 A. I don't know.

9 MS. POSNER: I'm sorry, I just -- can
10 you repeat that, Jed? I didn't get it.

11 MR. SCHWARTZ: Yeah, let me just try
12 to get your testimony.

13 All right. Well, we will -- my
14 LiveNote isn't working, so I'll try to find
15 that later.

16 Q. What is Mr. Burrows' role as
17 cochairman of the Fund?

18 A. That means he and Jeff usually are the
19 top signers on things.

20 We all sign off on different things,
21 changes in the Fund and what have you, changes in
22 rules of the Fund, but just to have somebody as a
23 spokesperson from management and from the Union
24 side.

25 No more of a vote or it doesn't carry

1 TODD NEILSON

2 much more weight than -- it's just a point person.
3 If they have smaller meetings, it would be the
4 chairman on both sides to where you can't --
5 everyone can't get together in between meetings,
6 so you have a person to -- point person on each
7 side to talk to without getting the entire group
8 together all the time.

9 Q. Your paragraph 13 says, "Mr. Burrows
10 will have no role in overseeing this litigation,
11 its resolution, or distribution of any settlement
12 proceeds or judgment, if any."

13 Do you see that?

14 A. I do.

15 Q. What steps has the Fund taken to make
16 sure that that is the case?

17 A. They replaced him as lead plaintiff
18 for the Fund with me.

19 Q. Well, has the Fund made any attempt to
20 prevent Mr. Burrows from participating in any
21 decisions related to the litigation?

22 MS. POSNER: Objection.

23 I'm not sure I understand that
24 question.

25 A. He is no longer in communication with

1 TODD NEILSON

2 anything with this case. Everything now is going
3 through me as it applies to this case, and Laura,
4 of course, as my counsel for the Fund.

5 Q. Has the Fund passed any resolution or
6 enacted any rule that would take authority from
7 Mr. Burrows -- take authority away from
8 Mr. Burrows with respect to this litigation?

9 A. No, other than the filings. The
10 filings have all been -- everything has been
11 refiled and everything has been legally switched
12 over to me as the plaintiff -- as a representative
13 of the Fund in this case.

14 Q. But Mr. Burrows still retains the
15 ability to vote on all relevant Fund matters,
16 right?

17 A. Yes.

18 Q. And if the Fund decides to take an
19 action with respect to this litigation, if
20 Mr. Burrows's -- isn't Mr. Burrows entitled to
21 provide his input into that?

22 A. I'm not sure I understand the
23 question.

24 Q. Sure.

25 So your -- your statement here says

1 TODD NEILSON

2 Mr. Burrows will have no role in, for example, the
3 resolution of this action.

4 Do you see that?

5 A. I do see that, yes.

6 Q. How has the Fund -- when has --
7 withdrawn.

8 What has the fund done to prevent
9 Mr. Burrows from participating in the resolution
10 of this action?

11 MS. POSNER: Objection, asked and
12 answered.

13 But you can answer again.

14 A. They have removed him as the plaintiff
15 representing the Fund in this case with me, and
16 all communication and anything as it applies to
17 this action will go through me and my counsel.

18 Q. If the Fund decides to resolve this
19 matter, will all of the trustees have to vote on
20 that?

21 A. If, in fact -- if, in fact, it comes
22 to that point, then, you know, if something needs
23 to be made aware of it based on this, then if a
24 vote needs to be taken, then he will be asked to
25 take himself out of it and abstain, if that's

1 TODD NEILSON

2 necessary to adhere to this, the documentation
3 that he won't be involved in the litigation or the
4 resolution.

5 We'll cross that bridge when we come
6 to it.

7 Q. Have you spoken to Mr. Burrows to
8 confirm that he would do that?

9 A. I did not. I haven't spoken to him at
10 all about this case.

11 Q. Now, paragraph 13 says that you
12 prepared a new certification attached as
13 Exhibit A.

14 Do you see that?

15 A. I do.

16 Q. And that's the document that's behind
17 this listed as Exhibit A, correct?

18 It begins on page 6?

19 A. I don't have it in front of me, you
20 have it, so you can -- yeah, I guess that's it. I
21 do now, yes.

22 Q. Did you prepare this document?

23 A. I did not.

24 Q. Did you -- did you sign this document?

25 A. Yes.

1 TODD NEILSON

2 Q. Did you understand you were signing
3 this under oath?

4 A. I did.

5 Q. And you reviewed it to make sure it
6 was accurate?

7 A. Yes, I did.

8 Q. Now, paragraph 2 says, "IBEW Local
9 98" -- which is the Fund, correct?

10 A. No, it's not correct. IBEW 98 we said
11 is the Union.

12 The Fund is the Fund. Those are two
13 separate entities.

14 Q. Yeah. So if you look, it's a
15 little -- it's a little different with this
16 document.

17 So if you look at the very first
18 paragraph --

19 A. I'm sorry, yes, I see it at the top in
20 parentheses.

21 As it applies to this document, yes.
22 I apologize.

23 Q. No problem.

24 So paragraph 2 is referring to the
25 Fund, correct?

1 TODD NEILSON

2 A. Correct.

3 Q. And it says, "The Fund didn't purchase
4 the security that's the subject of this action at
5 the direction of counsel or to participate in any
6 private action."

7 Do you see that?

8 A. I do see that, yes.

9 Q. What did you do to make sure that you
10 were comfortable that was accurate?

11 A. I'm not sure I understand your
12 question.

13 Q. Well, how did you know that was true
14 when you signed this document?

15 A. Because we went through all the
16 documents. I had our counsel go through all the
17 documents, and nothing was done after this at that
18 time.

19 I'm just -- I'm not understanding the
20 line of questioning. Can you rephrase that,
21 please?

22 Q. Well, you -- when you reviewed this
23 document, you wanted to make sure that that
24 statement was true, correct?

25 A. Yes.

1 TODD NEILSON

2 Q. How did you make sure that that
3 statement was true?

4 A. How did I make sure?

5 I didn't make sure it was true. I
6 reviewed it with counsel prior to signing it to
7 make sure that all that stuff was done prior to me
8 doing so.

9 Q. Now, paragraph 4 refers to a -- an
10 attached Schedule A.

11 Do you see that?

12 A. I do.

13 Q. Now, the version of this document that
14 we have did not include a Schedule A.

15 Did you see a Schedule A when you
16 signed this?

17 A. I saw it as part of the binder. I
18 didn't see it as part of the document. I was made
19 aware of it, though.

20 And it has since been amended, it's my
21 understanding.

22 Q. What has been amended?

23 A. The filing.

24 Q. To include a Schedule A?

25 A. Yes.

1 TODD NEILSON

2 Q. Paragraph 6 says, "IBEW Local 98 has
3 fully reviewed the facts and allegations of the
4 consolidated complaint filed in this action."

5 Do you see that?

6 A. Yes.

7 Q. And who is that referring to at
8 Local 98 that did that?

9 A. The Pension Fund.

10 Q. Who at the Pension Fund?

11 A. The attorneys for the Fund and myself.

12 Q. How much time did you spend reviewing
13 the complaint before you signed this document?

14 A. I don't know. I read it over numerous
15 times, had several discussions with my attorney
16 about it. I don't -- I didn't really time myself,
17 to be honest with you.

18 Q. And all of that was done before you
19 signed this document?

20 A. Yes.

21 Q. Now, paragraph 9 says that IBEW
22 Local 98 will not accept any payment for serving
23 as class representative beyond certain things,
24 including lost wages.

25 Do you see that?

1 TODD NEILSON

2 A. I do.

3 Q. Does the Fund pay any wages to any of
4 its trustees?

5 A. No.

6 Q. Does the Fund pay any wages to
7 anybody?

8 A. No.

9 MR. SCHWARTZ: All right. Chassity,
10 can you bring that down, and please bring up
11 Tab 13, which was previously marked as
12 Exhibit 7.

13 MS. POSNER: Jed, we've been going
14 over an hour now. Do you want to take a
15 break or break for lunch?

16 I'm not sure how the witness is doing
17 either.

18 MR. SCHWARTZ: That's totally up to
19 the witness.

20 THE WITNESS: I'm fine to keep going.
21 Maybe let's take 5 minute, 10 minutes? It's
22 up to you guys, if you want to take lunch,
23 go ahead. But if not, just 5 or 10 minutes
24 to just wash face, use the restroom and
25 regroup and get this done. You know, this

1 TODD NEILSON

2 way we're not going into the wee hours of
3 the evening.

4 MR. SCHWARTZ: You know, let's go off
5 the record.

6 VIDEOGRAPHER: We're going off the
7 record at 12:19 p.m.

8 (Luncheon recess.)

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1 TODD NEILSON

2 A F T E R N O O N S E S S I O N

3 VIDEOGRAPHER: We're back on the
4 record at 12:50 p.m.

5 BY MR. SCHWARTZ:

6 Q. Mr. Neilson, we've put on the screen
7 before you a document that's been previously
8 marked as Exhibit 7.

9 (Exhibit 7, document, was previously
10 marked for identification and shown at this
11 time.)

12 MR. SCHWARTZ: And, Chassity, if you
13 could give the witness and myself control,
14 I'd appreciate it.

15 BY MR. SCHWARTZ:

16 Q. Mr. Neilson, you should have control
17 of the document.

18 Take whatever time you need, but
19 please take a look through this and let me know if
20 you've seen this before.

21 A. Yes, I've seen this.

22 Q. Okay.

23 MR. SCHWARTZ: I think we're getting
24 some feedback from someone, so if you'd go
25 on mute, I'd appreciate it.

1 TODD NEILSON

2 Q. Now, you've turned to page 2 of the
3 document. I wanted to ask you a question.

4 Do you see the first paragraph says,
5 "I, Brian Burrows, President at IBEW Local 98"?

6 A. I do see that.

7 Q. And IBEW Local 98 is in the paragraph
8 before defined as the Pension Fund.

9 Do you see that?

10 A. It's in the parentheses here, yeah, I
11 see that.

12 Q. So I was confused before, but is it --
13 is it incorrect to say that Mr. Burrows is the
14 president of the Pension Fund?

15 A. He is the president of the Union.

16 Q. Okay. He's -- just to confirm, he's
17 the president of the Union and cochairman of the
18 Fund, correct?

19 A. But as -- as president of the Union,
20 yes, that is correct, yeah.

21 Q. Okay. And now, if you could turn to
22 page 4 of this document, do you see it's labeled
23 "Schedule A"?

24 A. Yeah, I did something -- I don't know,
25 something going on here. Here we are. Oh.

1 TODD NEILSON

2 All right. So what am I looking for
3 now? I'm sorry.

4 Q. Page 4 of this document, Exhibit 7,
5 which is labeled "Schedule A"?

6 A. Yes.

7 Q. Do you recognize Schedule A?

8 A. I do.

9 Q. And what is it?

10 A. That's just a synopsis of the
11 purchases made and the prices that we bought at
12 different times and sold at different times of the
13 holdings that LSV had done for us. It's a
14 synopsis of the shares that we bought and sold
15 throughout the course of this case.

16 Q. And these are shares of SCANA,
17 correct?

18 A. Correct.

19 Q. And is it your understanding that this
20 document reflects all of the purchases and sales
21 of SCANA stock on behalf of the Fund from July of
22 2015 through April of 2017?

23 A. Yeah, I believe that to be the case.

24 Q. Okay. How did the Fund decide when to
25 purchase or sell the shares of SCANA stock?

1 TODD NEILSON

2 A. The Fund didn't decide. We have
3 investment managers that make those decisions.

4 Q. And with respect to the SCANA stock,
5 who or what was the investment manager?

6 A. That would be LSV.

7 Q. And does LSV have complete discretion
8 as to which stocks to purchase and sell?

9 A. LSV has a pool of money that they're
10 allowed to invest on our behalf within certain
11 parameters of what they're allowed to invest in
12 based on the rules and the regulations of the
13 Fund.

14 Q. And so within those parameters that
15 you mentioned, does LSV then have the total
16 discretion as to which stocks to purchase?

17 A. Yes.

18 Q. And does it -- does LSV have --
19 withdrawn.

20 Again, within those parameters, does
21 LSV have total discretion as to when to make a
22 purchase or sale of a particular stock?

23 A. Yes.

24 Q. And, again, within the parameters that
25 you mentioned, does LSV have total discretion as

1 TODD NEILSON

2 to how much of a particular stock to purchase or
3 sell?

4 A. Yes.

5 Q. Okay. Other than setting the
6 parameters for the investments in which LSV is
7 authorized to make an investment, did the Fund
8 have any role in determining to make the purchases
9 or sales that are listed on Schedule A, Exhibit 7?

10 A. No, we did not.

11 Q. Did anyone at the Fund talk to LSV in
12 connection with the trades that are listed here on
13 Schedule A?

14 A. Not to my knowledge. That's not
15 something typically that we do.

16 Q. Since the commencement of this case
17 has the Fund had any discussion with LSV about the
18 Fund's investment in SCANA?

19 A. No, not to my knowledge.

20 Q. Does the Fund receive periodic reports
21 from LSV as to the Fund's investments?

22 A. Yes.

23 Q. And does the Fund periodically have
24 discussions with LSV as to its investments?

25 A. No. Most of those discussions are

1 TODD NEILSON

2 handled via our investment consultants.

3 We have a consultant that deals
4 directly with the asset managers, so we don't have
5 multiple people contacting the Fund
6 administrators.

7 We have -- our investment consultant
8 does all of the communication to the individual
9 investors, and he, in turn, reports back to the
10 trustees on a quarterly basis at our quarterly
11 meetings.

12 Q. Does the investment consultant speak
13 with the Fund's asset managers, like LSV?

14 A. I don't know. That would be a
15 question for the investment consultant.

16 I would assume so.

17 Q. And who is the investment consultant?

18 A. Michael Joyce.

19 Q. Does he work for a company or is he on
20 his own?

21 A. He works for Marco.

22 Q. How do you spell that?

23 A. M-A-R-C-O.

24 Q. Is Mr. Joyce's consulting arrangement
25 with the Fund documented in any way, like through

1 TODD NEILSON

2 an agreement?

3 A. I think, yeah, we have a contract with
4 him, and it's reviewed periodically based on
5 investment performance, whether or not he's
6 retained or whether or not we're in the market for
7 someone else based on performance.

8 Q. And is it your understanding that
9 Mr. Joyce may have had conversations with LSV
10 about the Fund's investments during the class
11 period?

12 A. I don't know.

13 I think my understanding would be just
14 based on the overall performance, not based on the
15 individual -- each individual investment. I don't
16 know that there's enough time in the day for all
17 of that.

18 Q. Did the Fund have any conversations
19 with LSV about its investments in SCANA stock at
20 any time?

21 A. Not to my knowledge.

22 Q. Do you know why the Fund started
23 investing in SCANA in July 2015?

24 A. That would be a question for LSV. We
25 don't review their investments. They make the

1 TODD NEILSON

2 investments. They're the investment
3 professionals.

4 So we -- we rely on their judgment as
5 far as what's investable and what's not for the
6 benefit of our members. It's based on return --
7 rate of return, risk, and everything else is all
8 factored.

9 Q. Did the Fund have any discussion with
10 LSV about investing in electric or natural gas
11 utility companies?

12 A. Not to my knowledge, no. We don't
13 discuss individual investments. We leave it up to
14 the professionals.

15 Q. And I'm just trying to do this in as
16 efficient a way as possible.

17 MR. SCHWARTZ: We lost the witness.

18 MS. POSNER: Todd, are you still
19 there?

20 THE WITNESS: I lost you there for a
21 second. Here we go. Sorry about that.

22 Q. So I'm going to try to do this in as
23 efficient a way as possible. So I'm going to ask
24 a broad question. If you need me to break it into
25 pieces, let me know.

1 TODD NEILSON

2 But my question is: With respect to
3 any of the purchase and sales listed on
4 Schedule A, did the Fund have any communication,
5 whether written or otherwise, with LSV as to the
6 reason for the purchase or sale?

7 A. Not to my knowledge, no.

8 Q. And you said not to your knowledge,
9 but I just want to make sure you're not limiting
10 it just to your knowledge personally.

11 You're testifying as the
12 representative of the Fund, right?

13 A. I have no knowledge of them -- anybody
14 being in contact with LSV regarding these
15 transactions. Nothing has been brought to my
16 attention as such.

17 So I guess the answer to your question
18 is "no."

19 MR. SCHWARTZ: Chassity, we can take
20 that document down.

21 Chassity, can you bring up Tab 15,
22 please.

23 (Exhibit 17, document, Bates stamped
24 PLTF-LOCAL98-0000037, was marked for
25 identification at this time.)

1 TODD NEILSON

2 MR. SCHWARTZ: This is a document --
3 multipage document that we've marked as
4 Exhibit 17. It begins at Bates
5 No. PLTF-LOCAL98-0000037.

6 Take a look, and my first question is:
7 Have you seen this document before?

8 A. It's blank on my screen.

9 Q. Okay.

10 MR. SCHWARTZ: Give it a minute to
11 reload, otherwise you might have to take it
12 done and reload it.

13 Q. Can you see it now?

14 A. No, blank screen.

15 MR. SCHWARTZ: Chassity, can you take
16 the document down and try to reload it?

17 Thank you.

18 THE WITNESS: I see it now.

19 Q. Okay. Now, to refresh you, my
20 question was: Have you seen this document before?

21 A. Yeah, that's just a fee schedule and
22 an agreement with LSV, it looks like.

23 Q. And is it your understanding that this
24 forms part of the agreement that governs the
25 purchase of the SCANA stock that are at issue in

1 TODD NEILSON

2 this case?

3 A. No. This is just my understanding
4 that this is just a fee schedule for anything that
5 they -- any -- anything they do with us, how their
6 fee structure is.

7 Q. Okay. Who signed this on behalf of
8 the Fund?

9 A. I don't know. I can't see page 2 or
10 3. I can only see page 1.

11 Q. Okay. Can you see page 2 now?

12 A. No. It's blank.

13 Q. All right. Do you know someone named
14 Donald Reis, R-E-I-S?

15 A. Do I know him?

16 I know of him, yes. I know of him.

17 He's a former trustee -- former management
18 trustee, no longer sits on the Fund. He's retired
19 now.

20 Q. Okay. So Mr. Reis was a management
21 trustee of the Fund.

22 Do you recall when?

23 A. He was on there when I first got on.
24 He's been off for a few years now.

25 Q. Okay.

1 TODD NEILSON

2 A. At least two or three years he's been
3 gone, I believe. Don't quote me on that, but at
4 least a couple of years he's been retired.

5 Q. Okay.

6 MR. SCHWARTZ: We can take that
7 document down.

8 And then can you bring up Tab 16,
9 please.

10 (Exhibit 18, PNC statement, Bates
11 stamped PLTF-LOCAL98-0000001, was marked for
12 identification at this time.)

13 MR. SCHWARTZ: We've marked as
14 Exhibit 18, a multipage document beginning
15 at Bates No. PLTF-LOCAL98-0000001.

16 BY MR. SCHWARTZ:

17 Q. Mr. Neilson, do you see that document?

18 A. I see Exhibit 18, but there's no
19 other -- I can't see anything else other than a
20 blank page.

21 I see the Exhibit 18 in the bottom
22 right-hand corner, I don't see anything else
23 there.

24 MR. SCHWARTZ: Okay.

25 A. And as I scroll through, just more

1 TODD NEILSON

2 blanks.

3 Oh, could we take that down -- there.

4 I tried to make it a little bit bigger and it's
5 not -- it's all messed up again. A blank screen.

6 MR. SCHWARTZ: Okay. Chassity, can
7 you take that down and try bringing it back
8 up again?

9 THE WITNESS: There we go. Okay.

10 MR. SCHWARTZ: Okay.

11 Q. Mr. Neilson, do you know what this
12 document is?

13 A. Yeah, it's a PNC statement.

14 Q. And what service does PNC serve or
15 provide to the Fund?

16 A. It's our bank account. They do a lot
17 of -- they did a lot of -- they're our main bank
18 account, the bank that we deal with with all our
19 funds.

20 Q. And do you -- do you know whether PNC
21 is the custodian for the Fund's securities?

22 MS. POSNER: Objection.

23 A. I'm not a hundred percent certain of
24 that. I believe they -- I believe they disburse
25 all the money as -- all the funds are given to PNC

1 TODD NEILSON

2 to disburse, I believe, and then they get
3 something accordingly, they're able to see it.

4 Q. So I'm turning to page 3 of this
5 document.

6 Are you at page 3?

7 A. Blank.

8 Q. All right. Did it show up?

9 A. No.

10 Q. Okay.

11 MR. SCHWARTZ: Chassity, are you able
12 to share your screen, or just this document?

13 A. I can see it now.

14 Q. Okay.

15 MR. SCHWARTZ: Chassity, can you go to
16 page 3?

17 Q. Mr. Neilson, can you read that?

18 A. Yes.

19 Q. And you see it says, "Corporate
20 Stock - Common," up at the top?

21 A. Yes.

22 Q. And then there's a number of
23 redactions, but the unredacted portion refers to
24 SCANA Corp.

25 Do you see that?

1 TODD NEILSON

2 A. Okay. Yeah.

3 Q. Do you know why PNC is providing the
4 Fund with a document that lists holdings in common
5 stock?

6 MS. POSNER: Objection.

7 I don't understand that question.

8 A. Now, I don't -- I don't understand it
9 either.

10 What -- can you rephrase that in some
11 other way?

12 Q. Well, so you said PNC -- I thought you
13 said it was the bank account for the Fund. Is
14 that right?

15 A. I said -- I said -- I said, most of
16 our accounts are with PNC, is what I said, I
17 believe.

18 Q. Would that include accounts that hold
19 securities?

20 A. I don't -- I don't know the answer to
21 that question.

22 We have the financial professionals
23 that oversee all that stuff, as well as -- as well
24 as Frank Vaccaro, our Fund administrator, they
25 take care of all the -- putting together the

1 TODD NEILSON

2 paperwork and presenting it to the trustees.

3 We don't look at every individual bank
4 statement, holding statement. They memorialize
5 all that stuff and put it together for us. We
6 don't do the day-to-day stuff with -- as it
7 applies to the Fund.

8 Q. Have you ever seen a statement from
9 PNC with respect to any of the Fund's accounts?

10 A. Only as it applies to this case.

11 Q. Okay. So you had never seen this
12 document before you were involved in this case?

13 A. No, I have not.

14 Q. And do you know why the PNC is
15 providing this document to the Fund?

16 MS. POSNER: Objection.

17 A. No. I think you would have to ask PNC
18 that.

19 MS. POSNER: Sorry.

20 Objection, assumes facts not in
21 evidence.

22 Q. Did this document come from the Fund's
23 files?

24 A. Yes.

25 Q. Do you know how the Fund received this

1 TODD NEILSON

2 document?

3 A. How they received it? Yeah.

4 Tara Chupka, the legal counsel for the
5 Fund, got everything related to the Fund, anything
6 that had came up under SCANA, to put together as
7 part of the discovery for this case, submitted it
8 so that that way anything that came up, SCANA or
9 its ticker symbol, put into the file as part of
10 this case and sent it on as part of the discovery
11 for this litigation.

12 Q. Okay. There may be some confusion.

13 In order for Ms. Chupka to have done
14 that, this document would have had to have been in
15 the Fund's files, correct?

16 MS. POSNER: Objection, assumes facts
17 not in evidence.

18 A. Yeah, that -- it must have came up
19 through her fact-finding mission with everything
20 that came about.

21 It would be something you would have
22 to ask her. I can't speak for her other than all
23 these documents were put together by her, and how
24 she came about getting them, it's -- I can't
25 answer to that firsthand, only that she did

1 TODD NEILSON

2 receive them and shared them with everybody as
3 part of this case.

4 MS. POSNER: Jed, do you want to go
5 off the record for one minute?

6 MR. SCHWARTZ: Sure.

7 VIDEOGRAPHER: We're going off the
8 record at 1:17 p.m.

9 (Recess.)

10 VIDEOGRAPHER: We're back on the
11 record at 1:18 p.m.

12 MR. SCHWARTZ: Can we stipulate that
13 this document, which is Exhibit -- Chassity,
14 what exhibit is this? Eighteen?

15 Can we stipulate that this document,
16 Exhibit 18, is a record of the Fund and that
17 it was accessible to the fund at or about
18 the time that it was created?

19 MS. POSNER: So stipulated.

20 MR. SCHWARTZ: Okay. Chassity, I
21 think we're done with that document.

22 BY MR. SCHWARTZ:

23 Q. What is the Fund's understanding of
24 what SCANA was during the class period?

25 A. I'm not sure I understand the

1 TODD NEILSON

2 question.

3 Q. What did -- did the Fund have any
4 understanding of what the company SCANA did during
5 the class period?

6 A. Again, prior to the -- we didn't know
7 we were investing in SCANA per se.

8 You had LSV, who had a pool of money
9 at the time, that was just doing investments. We
10 weren't -- we were not up to speed as far as every
11 individual investment, every individual
12 transaction.

13 We just rate our investment managers
14 based on their overall performance, and LSV has
15 been a well-performing investment manager for us
16 for a long, long time. What holdings they have
17 from time to time to us is irrelevant.

18 Usually, the bottom line is that they
19 have a good track record as far as what they do
20 and as far as based on the rate of returns that
21 they get for our folks.

22 Q. Did anyone at the Fund have any
23 discussions with SCANA personnel during the class
24 period?

25 A. No.

1 TODD NEILSON

2 Q. Did anyone at the Fund review any
3 analyst reports related to SCANA securities?

4 A. No.

5 Q. Did anyone at the Fund -- withdrawn.

6 Was anyone at the Fund aware during
7 the class period that SCANA was developing a
8 nuclear project?

9 A. No. Not to my knowledge, no.

10 Q. Has anyone at the Fund ever spoken
11 with someone at Deloitte & Touche or Deloitte LLP
12 relating to SCANA?

13 A. Not to my knowledge, no.

14 Q. You understand that in approximately
15 January of 2020, the Fund moved to be appointed as
16 lead plaintiff in this case, right?

17 A. Yes.

18 Q. Did the Fund review any of the filings
19 made in connection with that request before they
20 were filed?

21 A. Yes, I believe they did through our --
22 Fund counsel did.

23 Q. Why didn't the Fund disclose in those
24 filings that Mr. Burrows had been indicted?

25 MS. POSNER: Objection, beyond the

1 TODD NEILSON

2 scope of the 30(b) (6) and part of a pending
3 motion for protective order.

4 A. I don't think it has any relevancy to
5 us filing the case. It's an allegation at this
6 point. It has nothing to do with this. It has
7 nothing to do with the Fund.

8 Q. So just so I understand, your
9 testimony is that the Fund considered the issue at
10 the time and decided that it did not need to be
11 disclosed?

12 MS. POSNER: Objection, misstates his
13 testimony.

14 A. I definitely didn't say that. I
15 didn't say anything of the sort.

16 Q. Okay. So --

17 A. It has nothing to do with the Pension
18 Fund. The Pension Fund is something that's
19 separate from the case that you're speaking of.

20 Q. So I'm asking, as a representative
21 here of the Fund, why didn't the Fund disclose in
22 those lead plaintiff filings that Mr. Burrows had
23 been indicted?

24 MS. POSNER: Same objections, and
25 asked and answered.

1 TODD NEILSON

2 A. As previously stated when you brought
3 it up earlier, that when the indictment came down,
4 the attorneys for the Fund let everybody on the
5 Fund know what was going on and assured us that
6 nothing -- the Fund was not in jeopardy, the Fund
7 was not under investigation at any way, shape, or
8 time, so thereafter, they didn't need to worry
9 about anything as it applies to the Fund and the
10 business that the funds were doing as it applies
11 to the 98 Pension Trust Fund.

12 Q. And so what I want to know is: Is
13 that the decision that the Fund made in connection
14 with the filings as to why this issue did not need
15 to be disclosed?

16 MS. POSNER: Same objections, and
17 also, I don't understand the question.

18 A. Based on what we handled, we didn't
19 see any reason to handle anything and change the
20 way we do business as far as the Fund is concerned
21 based on the advice of our attorneys.

22 Q. When did you receive that advice that
23 you're referring to?

24 A. I don't recall exactly when, but it
25 was probably when the indictments came down in the

1 TODD NEILSON

2 very beginning, two years back.

3 Q. And that was approximately January of
4 2019, right?

5 A. I don't know. I don't know the
6 details of when the indictments came down, so I'd
7 be -- I'd be doing a disservice if I threw that
8 date out.

9 I'm not sure when -- when all the
10 allegations became public and the indictments came
11 down, the next trust meeting that we had, we were
12 advised where we stood as a Fund and to make sure
13 that our fiduciary responsibility was to the
14 members and to the Fund, to make sure that we
15 don't put the Fund or its investments at risk in
16 any way, shape, or form.

17 Q. And then, in connection with the lead
18 plaintiff process, did the Fund actually make a
19 consideration of whether the indictment needed to
20 be disclosed or is it something that was not
21 considered?

22 MS. POSNER: Objection, asks for
23 attorney-client privileged communication and
24 beyond the scope of the 30(b)(6) and pending
25 the motion for a protective order.

1 TODD NEILSON

2 MR. SCHWARTZ: Well, you and I
3 disagree.

4 Are you instructing the witness not to
5 answer?

6 MS. POSNER: If you can answer that
7 without disclosing attorney-client
8 privileged communications, I'll allow you to
9 answer.

10 A. I don't believe I can at this time.

11 Q. You mean you're not able to answer
12 that without disclosing attorney-client
13 communication?

14 A. That is correct.

15 MR. SCHWARTZ: Chassity, can we bring
16 up Tab 12?

17 (Exhibit 19, Amended and Restated
18 Agreement and Declaration of Trust, Bates
19 stamped PLTF-LOCAL98-0000049, was marked for
20 identification at this time.)

21 BY MR. SCHWARTZ:

22 Q. Do you have a document in front of you
23 that's titled "Amended and Restated -- Restated
24 Agreement and Declaration of Trust"?

25 A. No, I have another blank document.

1 TODD NEILSON

2 MR. SCHWARTZ: Okay.

3 All right. Let's go off the record.

4 VIDEOGRAPHER: We're going off the
5 record at 1:30 p.m.

6 (Recess.)

7 VIDEOGRAPHER: We are back on the
8 record at 1:32 p.m.

9 MR. SCHWARTZ: Okay.

10 BY MR. SCHWARTZ:

11 Q. Mr. Neilson, you have before you a
12 document that's been marked as Exhibit 19, and
13 it's a 56-page document that begins with Bates
14 No. PLTF-LOCAL-98, ending in 49.

15 Do you see that?

16 A. I do.

17 Q. Have you seen this document before?

18 A. Way back, yes, when I became -- first
19 became a trustee on the Fund.

20 Q. And what is this?

21 A. That's a copy of -- an old copy of our
22 Pension Trust document.

23 Q. And is this the most recent version of
24 the Pension Trust document?

25 A. I'm not sure. There have been updates

1 TODD NEILSON

2 since then. I don't -- I can't honestly say.

3 That's from 1975, according to that.

4 I know it's been amended since then. I don't know
5 if all the amendments are included in this, so ...

6 Q. I don't believe that they're -- that
7 they are.

8 Your understanding -- your best
9 understanding is that there have been amendments
10 to this document since 1975?

11 A. I wasn't on there in '75, but I know
12 there's been little rules changes. I'd be remiss
13 to say what's been changed, if anything.

14 I'm sure it's been updated in some
15 way, shape, or form.

16 Q. Okay. Yeah, I'm going to go to
17 page 6.

18 A. Okay.

19 Q. And do you see there, there's a
20 section -- I'm go that blow it up here -- that
21 3.1A that starts at the bottom?

22 And it says, "The Pension Fund shall
23 jointly be administered," and then it continues,
24 and I'll keep reading, "by six trustees, three of
25 whom shall be appointed by the president of the

1 TODD NEILSON

2 Union and shall act as employee trustees, and
3 three of whom shall be appointed by the
4 association and shall act as employer trustees."

5 Do you see that?

6 A. Okay, yeah.

7 Q. Now, you had testified before that
8 there are actually four and four. Is that
9 correct?

10 A. We have three Union trustees. There
11 are currently four management trustees.

12 Q. But there's the ability to have eight
13 in total, correct?

14 A. I guess, yeah. But I'm not -- I'm not
15 certain of that. I just don't -- there's four
16 trustees right now.

17 Q. My question is: Given what this says,
18 does that -- does that indicate to you that this
19 document is not the most recent version of the
20 trust agreement?

21 A. It doesn't indicate to me at all. It
22 just means that this is a document from 1975. I
23 don't know if it's updated since then or not.

24 Q. Okay.

25 MR. SCHWARTZ: All right. We can

1 TODD NEILSON

2 bring that down.

3 And then can we bring up Tab 17,
4 please?

5 (Exhibit 20, Form 10-K for South
6 Carolina Electric & Gas, filed February 24,
7 2017, was marked for identification at this
8 time)

9 MR. SCHWARTZ: This document is titled
10 "Form 10-K for South Carolina Electric &
11 Gas," filed February 24, 2017.

12 BY MR. SCHWARTZ:

13 Q. Do you see that?

14 A. Yeah, I see it.

15 Q. Have you ever seen this document
16 before?

17 A. No, I haven't seen this.

18 Q. Has anyone at the Fund, to your
19 knowledge, ever seen this document?

20 A. Not to -- not to my knowledge.

21 Q. Do you know if anyone at the Fund
22 reviewed any SEC filings related to SCANA during
23 the class period?

24 A. To my knowledge, no.

25 Q. Do you know if anyone at the Fund

1 TODD NEILSON

2 reviewed any of the financial statements for SCANA
3 at any time?

4 A. Not to my knowledge.

5 Q. I'm going to turn to page 15 of this.
6 I'm going to blow it up.

7 Can you -- can you see page 15?

8 A. Yes.

9 Q. Okay. Do you see the --

10 MS. POSNER: Sorry. Jed, I see 12 up.

11 A. It says 15 up top, but 12 at the
12 bottom.

13 Q. Okay. Yes, that's correct. Page 12
14 of the document, page 15 of the PDF.

15 A. Okay.

16 Q. The top paragraph says, "In addition
17 to the project risks."

18 Do you see that?

19 A. Yes.

20 Q. And you see the second paragraph
21 begins "SCE&G."

22 Do you see that?

23 A. I do.

24 Q. It says, "SCE&G and Sandy Cooper, the
25 co-owner of the new units, continue to evaluate

1 TODD NEILSON

2 various actions which might be taken in the event
3 that Toshiba and WEC are unable or unwilling to
4 complete the project. These include completing
5 the work under any of several arrangements with
6 other contractors or, where it determined to be
7 prudent, halting the project, leaving SCE&G to
8 pursue cost recovery under abandonment provisions
9 of the BLRA."

10 Do you see that?

11 A. I do.

12 Q. Was the Fund aware of that statement
13 at any point during the class period?

14 A. No.

15 Q. Do you know if LSV was aware that in
16 February of 2017, it was disclosed that the
17 nuclear project might be abandoned?

18 MS. POSNER: Objection, misstates the
19 document.

20 A. Yeah, I can't speak for LSV, what they
21 saw and what they know.

22 Q. Was the Fund aware that in February of
23 2017, it was disclosed that the nuclear project
24 might be abandoned?

25 MS. POSNER: Objection, misstates the

1 TODD NEILSON

2 document.

3 A. No, we weren't made aware. No, we
4 weren't made aware of any of that.

5 Q. Now, do you know if the Fund had the
6 ability to access this document?

7 A. No, I don't.

8 Q. Do you know whether this is a publicly
9 filed document?

10 A. I have no idea, no.

11 Q. Did the Fund make any attempt to
12 access the public filings of SCANA?

13 A. No.

14 Q. You would agree with me that if the
15 Fund had read what I just read to you, it would
16 have become aware no later than February of 2017
17 that the nuclear projects might be abandoned,
18 right?

19 MS. POSNER: Objection, misstates the
20 document, and also, as a hypothetical, it's
21 not appropriate for a 30(b) (6) .

22 Q. You can answer.

23 A. I don't know what to -- I can't speak
24 to that. I don't -- I don't know.

25 Q. Well, you would agree that it's pretty

1 TODD NEILSON

2 clear that this says that the project might be
3 abandoned, right?

4 MS. POSNER: Objection, misstates the
5 document.

6 A. According to what you're saying, like
7 I said, I don't know. I've never seen this
8 document before, so I can't speak to it.

9 Q. Well, you would agree that the
10 document makes it pretty clear that the project
11 might be abandoned?

12 MS. POSNER: Objection, misstates the
13 document.

14 A. Yeah, I don't know what the intent of
15 the document is, so I really can't honestly answer
16 that.

17 MR. SCHWARTZ: Let's go off the
18 record.

19 VIDEOGRAPHER: We're going off the
20 record at 1:43 p.m.

21 (Recess.)

22 VIDEOGRAPHER: We are back on the
23 record at 2:07 p.m.

24 BY MR. SCHWARTZ:

25 Q. Mr. Neilson, you should have before

1 TODD NEILSON

2 you the document we were looking at before,
3 Exhibit 20.

4 Do you?

5 A. Yes.

6 Q. Okay. I'm going to go to page 14 of
7 the PDF, which is labeled page 11, and I'll zoom
8 in, if I can.

9 Are you there?

10 A. Yes.

11 Q. And do you see that there's some bold
12 writing in the middle? It begins, "Recent
13 announcements"?

14 A. Yes.

15 Q. And it says, "Recent announcements by
16 Toshiba, the parent company of WEC, and the
17 guarantor of WEC's payment obligations with
18 respect to the above construction project for new
19 units at SCE&G's summer station related to
20 deterioration in its financial position and
21 liquidity, indicate heightened risk and
22 substantial uncertainty with respect to the cost,
23 timing, construction, and/or completion of the new
24 units."

25 Do you see that?

1 TODD NEILSON

2 A. Yeah, that disclaimer, yes, I see
3 that.

4 Q. Did anybody at the Fund read that in
5 or around February of 2017?

6 A. Not to my knowledge, no.

7 Q. Do you know if anybody at LSV read
8 that in February of 2017?

9 A. You'd have to ask somebody from LSV.
10 I can't speak for them.

11 Q. Would you agree with me that anyone
12 who is reading that would understand that as of at
13 least late February 2017, there were substantial
14 risks that the so-called "new units" would not be
15 complete?

16 A. Substantial?

17 No. That's a 156-page document.
18 That's one little blurb in a big, giant document,
19 right?

20 MS. POSNER: Objection, misstates the
21 document as well.

22 Q. So your testimony is that -- that
23 someone who read that portion of the document
24 would not understand that there were substantial
25 risks that the new units wouldn't be complete?

1 TODD NEILSON

2 MS. POSNER: Same objection.

3 A. I can't speak to this document. I've
4 only read one little blurb. It's 156 pages.
5 There's probably a lot of stuff that's in there
6 that's relevant to this investment.

7 And this is early. When was this?

8 February 2017? And this time frame goes all the
9 way to December 2017. So a lot could have
10 happened between then and now when this document
11 was put out.

12 So I don't know what to speak to it or
13 what to assume.

14 Q. Well, I'm not asking you to assume.
15 But as you sit here and read that sentence, you
16 understand that it says that there's substantial
17 risk to the completion of the new units, right?

18 MS. POSNER: Objection, misstates the
19 document.

20 A. Yeah, I don't know. It's a big
21 document.

22 To that line, maybe, but there's a
23 whole lot of other stuff there that I haven't had
24 the opportunity to read, so it's difficult to say.

25 Q. Okay.

1 TODD NEILSON

2 MR. SCHWARTZ: You could take that
3 document down.

4 Q. Has the Fund submitted a claim in
5 connection with any other litigation related to
6 SCANA?

7 A. No, not to my knowledge.

8 Q. And that would include the securities
9 litigation, correct, in which SCANA itself was
10 named as a defendant?

11 A. No, not to my knowledge.

12 Q. So your understanding is that the Fund
13 has not attempted to recover any amounts of its
14 alleged loss from SCANA?

15 MS. POSNER: Objection, misstates the
16 testimony.

17 A. Yeah, I don't -- I don't know. I
18 don't know what -- understand the line of
19 questioning because, as far as I know, no, there's
20 no other litigation as it refers to SCANA.

21 Q. What are the damages that the Fund is
22 claiming in this case?

23 MS. POSNER: Objection, not in
24 accordance with the schedule.

25 Q. You can answer.

1 TODD NEILSON

2 A. This isn't just about our loss. This
3 is about the loss of all the stakeholders. Us
4 stepping up as a lead plaintiff, you know, we're
5 willing to share in whatever each stakeholder is
6 entitled to based on what the decision is at the
7 end of the day.

8 We're not looking to get anything
9 individually. This is something that's broad
10 based, and all the stakeholders are entitled to
11 the same amount of equity into the case if, in
12 fact, it's ruled in our favor.

13 Q. Well, has the -- withdrawn.

14 One of the topics that you are
15 prepared to testify about is the Fund's actual or
16 claimed damages in this class action, correct?

17 MS. POSNER: Objection.

18 We have stated objections in response
19 to that topic. So subject to those
20 objections, he is prepared.

21 Q. So you are not prepared to testify as
22 to that topic?

23 A. I'm only prepared to testify as to the
24 stuff that I'm aware of as it applies to this
25 case.

1 TODD NEILSON

2 Q. So as the representative of the Fund,
3 are you prepared to testify today as to what the
4 Fund's damages are in this action?

5 MS. POSNER: Same objection.

6 A. Yeah, I am not. I don't know. I
7 don't have the monetary number.

8 Everything's on there. We -- it's not
9 just about us. It's about all the class holders,
10 as I previously stated.

11 Q. Has the Fund made any attempt to
12 quantify its damages?

13 A. No, other than the stuff that we
14 submitted into discovery.

15 Q. And what specifically are you
16 referring to?

17 A. That schedule that you had that shows
18 our -- the one that you included in your documents
19 earlier.

20 Q. The one that shows the purchases and
21 sales?

22 A. Yes.

23 Q. So other than that, you're not aware
24 of the Fund making any attempt to quantify its
25 damages?

1 TODD NEILSON

2 A. Not that I'm -- not that I'm aware of,
3 no.

4 MR. SCHWARTZ: Chassity, can you bring
5 up the interrogatory responses?

6 I think it's Tab 14.

7 (Exhibit 21, Plaintiffs' Responses and
8 Objections to Defendants' First Set of
9 Interrogatories, was marked for
10 identification at this time.)

11 MR. SCHWARTZ: Exhibit 21 is
12 Plaintiffs' Responses and Objections to
13 Defendants' First Set of Interrogatories.

14 BY MR. SCHWARTZ:

15 Q. Have you seen this before?

16 A. Yes.

17 Q. When did you see it?

18 A. When I went through it with counsel.

19 Q. And did you review this to make sure
20 that everything in here was accurate?

21 A. I read through it. It was done
22 previously. Counsel went through it ahead of time
23 making sure everything was accurate.

24 Q. And do you believe that all of the --
25 do you -- as the representative of the Fund, do

1 TODD NEILSON

2 you believe that all of the responses contained in
3 this document are accurate as of today?

4 A. Yes.

5 Q. Is there anything in here that you
6 would change?

7 A. Without going through it and reading
8 through the entire document, no.

9 And like I said, as of right now, I
10 say no, but ...

11 Q. Well, take whatever time you need.

12 I'd like to know if there's anything in here that
13 you would change as you sit here today.

14 MS. POSNER: Absent communications
15 with counsel, you want him to sit here and
16 read a 20-something page document?

17 MR. SCHWARTZ: It's significantly
18 shorter than that.

19 He's the one who qualified his
20 response. So, yeah, he can read this and
21 tell me if there is anything that would
22 change.

23 A. Okay. Good.

24 No, I don't think I need to change
25 anything. I think it's great.

1 TODD NEILSON

2 Thanks.

3 Q. Okay. Why did Ms. Chupka sign this?

4 A. Because she prepared everything,
5 prepared all the documents in order to file and
6 reviewed it with counsel.

7 Q. Is Ms. Chupka -- is she employed by
8 the Fund?

9 A. No, she's not employed by the Fund.

10 She's not paid by the Fund. She's an attorney for
11 the Fund.

12 Q. Does she have some kind of an
13 engagement letter with the Fund?

14 A. Not to my knowledge, no.

15 She's in-house counsel.

16 Q. For the -- for the Union, correct?

17 A. Correct.

18 MS. POSNER: Objection.

19 Q. Does Ms. Chupka hold any position with
20 the Fund?

21 MS. POSNER: Objection.

22 A. Advisory counsel.

23 Q. Well, what does that mean? Is she --
24 does she receive any payment?

25 A. No, she doesn't receive payment.

1 TODD NEILSON

2 I said, she's an attorney on the Fund.

3 Q. And what do you mean by that?

4 A. Pretty self-explanatory.

5 Q. Well, she doesn't work for the Fund,
6 right?

7 A. No, she doesn't work for the Fund.

8 No.

9 Q. And she doesn't get paid by the Fund?

10 A. Nobody gets paid by the Fund. There's
11 no employees.

12 You asked that the question earlier.

13 Q. And she doesn't have an engagement
14 letter with the Fund?

15 A. No.

16 Q. So what do you -- how do you
17 understand that she is the lawyer for the Fund?

18 A. She's an adviser -- a legal adviser to
19 the Fund.

20 Not for the Fund, to the Fund.

21 Q. Mr. Neilson, you understand that there
22 is a pending motion for a protective order that
23 relates to the scope of the testimony that has
24 been noticed for -- for the Fund, correct?

25 A. I don't understand your question, no.

1 TODD NEILSON

2 Q. Do you understand that -- well, do you
3 understand that there is a pending motion for a
4 protective order that would -- that relates to
5 certain of the topics that we looked at in the
6 first exhibit?

7 A. Yes.

8 Q. Are you available for -- to sit for
9 another deposition before October 1st depending on
10 the outcome of that motion?

11 MS. POSNER: Objection.

12 A. I'll do whatever I have to do. You
13 know, I'm here to represent the Fund and make sure
14 that I do my fiduciary responsibility to the
15 people of the asset class and my members.

16 So, yeah, whatever we've got to do.

17 Q. Okay. Mr. Neilson, aside from the --
18 the indictment and the labor complaint, are you
19 aware of any trustee of the Fund being named in a
20 criminal action or under criminal investigation?

21 MS. POSNER: Objection.

22 It's subject to the motion for
23 protective order.

24 MR. SCHWARTZ: All right. So you're
25 instructing him not to answer?

1 TODD NEILSON

2 MS. POSNER: Yes, he's not answering
3 questions regarding the subject of the
4 protective order, nor has he prepared for
5 that question.

6 Q. Mr. Neilson, you're following your
7 counsel's instruction?

8 A. Of course, I am.

9 MR. SCHWARTZ: Then I have nothing
10 further, obviously reserving rights
11 depending on what happens with the pending
12 motion.

13 MS. POSNER: I just have a few short
14 redirect.

15 EXAMINATION

16 BY MS. POSNER:

17 Q. Mr. Neilson, earlier today,
18 Mr. Schwartz was asking you some questions
19 regarding your preparation for today's deposition.

20 Do you remember that?

21 A. I do.

22 Q. And I believe you testified that you
23 spoke to counsel in preparation for the
24 deposition, right?

25 A. Yes.

1 TODD NEILSON

2 Q. And when you were referring to
3 counsel, were you also including Ms. Chupka, the
4 in-house counsel to the Fund, in your response?

5 A. Yes, I was.

6 Q. And when you spoke with Ms. Chupka --

7 MR. SCHWARTZ: Objection to that last
8 question. Misstates the testimony.

9 MS. POSNER: I wasn't stating any
10 testimony, but okay.

11 Q. When you spoke with Ms. Chupka, did
12 she tell you whether, prior to you taking over
13 oversight of this case, she reviewed the
14 pleadings -- or what are called "pleadings" or
15 "filings" in this case before they were made?

16 A. Yes, she did.

17 Q. And did she confirm whether she
18 reviewed those pleadings or filings for accuracy
19 before they were made?

20 A. Yes, she did.

21 Q. And did she confirm whether she ever
22 had comments or questions regarding those filings
23 before they were made?

24 A. Yes, she did.

25 Q. Did she also confirm for you whether

1 TODD NEILSON

2 Mr. Burrows reviewed the complaints filed in this
3 case?

4 A. Yes, she did.

5 Q. And did she confirm for you whether
6 she spoke regularly to me as counsel regarding the
7 litigation?

8 A. Yes.

9 Q. And did Ms. Chupka tell you what she
10 did to gather documents in response to defendants'
11 request for documents in this case?

12 A. Yes, she did.

13 Q. What did she tell you she did?

14 A. She told me she went through all the
15 files that we had. She went and did searches
16 through e-mails using keywords with SCANA, the
17 ticker symbol. Anything that came up in any of
18 our documents, e-mails, and what have you, and
19 gathered all that information and put it together
20 and sent it as part of her discovery for the case.

21 Q. Okay. Earlier today, you also were
22 asked some questions regarding the -- how the Fund
23 has participated in this class action.

24 Do you remember that?

25 A. I do.

1 TODD NEILSON

2 Q. In your answer, you stated that the
3 Fund moved for a lead plaintiff, correct?

4 A. Yes.

5 Q. Has the Fund also reviewed filings
6 before they were made as part of its participation
7 in this class action?

8 A. Yes, they did.

9 Q. Did the Fund also provide documents in
10 discovery as part of its participation in this
11 class action?

12 A. Yes, we did.

13 Q. Are you also sitting here today for a
14 deposition as part of your participation in this
15 class action?

16 A. Yes, I am.

17 Q. And did the Fund, whether that was
18 Mr. Burrows or Ms. Chupka, and now you, regularly
19 have conversations with counsel regarding the
20 litigation to understand what was happening in the
21 case as the case went on?

22 A. Yes, we have.

23 Q. And since you've taken over oversight
24 of this case, have you personally been the person
25 responsible for reviewing filings before they are

1 TODD NEILSON

2 made?

3 A. Yes, I am.

4 Q. And have you been taking on that
5 responsibility since you took over?

6 A. I have.

7 Q. And have you regularly spoken to me
8 regarding the case and what is happening in the
9 case?

10 A. Yes, I have.

11 Q. You were also asked earlier today some
12 questions regarding Mr. Burrows' role in this
13 litigation since you took over.

14 Do you remember that?

15 A. I do.

16 Q. And has Mr. Burrows been involved in
17 this case in any way since you took over for him?

18 A. No, not at all.

19 Q. Will Mr. Burrows have any involvement
20 in this case moving forward?

21 A. Absolutely not.

22 Q. Was -- is it your understanding that
23 Mr. Burrows was informed by Ms. Chupka that he
24 would have no role in this case going forward?

25 A. Yes, he was.

1 TODD NEILSON

2 Q. And did he accept that without any
3 issue?

4 A. Yes.

5 Q. Did he have any issue with stepping
6 away from the case?

7 A. No.

8 Q. Is there any need for a Board of
9 Trustees' vote on anything pertaining to this
10 litigation at any time?

11 MR. SCHWARTZ: Objection.

12 A. No, I don't see any reason for that.

13 Q. Will there at any point be a need for
14 a Board of Trustees' vote on whether to settle
15 this case?

16 A. No.

17 Q. Will there be a need for a Board of
18 Trustees' vote on the amount this case should
19 settle for, if there is a settlement to be had?

20 A. No.

21 Q. And do you have the full, exclusive
22 authority to act on behalf of the Fund in this
23 action?

24 A. I do.

25 Q. Do the Fund's bylaws require any sort

1 TODD NEILSON

2 of board resolution or any sort of documentation
3 for you to have that authority?

4 A. No, not to my knowledge.

5 Q. Can you alone, in consultation with
6 counsel -- and, by "counsel," I mean me, Cohen
7 Milstein -- decide litigation strategy in this
8 case on behalf of the Fund?

9 A. Yes.

10 Q. And will you exclusively do that
11 moving forward in this case?

12 A. I will.

13 Q. And can you alone, in consultation
14 with Cohen Milstein, decide whether to settle this
15 case and for what amount to settle this case on
16 behalf of the Fund, if appropriate?

17 A. Yes, I can.

18 Q. And will you do so?

19 A. I certainly will.

20 MS. POSNER: I have no further
21 questions, pending any redirect.

22 MR. SCHWARTZ: Yeah, I have a few
23 questions.

24 EXAMINATION (continued)

25 BY MR. SCHWARTZ:

1 TODD NEILSON

2 Q. First, in the beginning of
3 Ms. Posner's examination, she referred to
4 Ms. Chupka as the in-house counsel to the Fund,
5 and you agreed with that.

6 Did you misspeak or is Ms. Chupka, in
7 fact, the in-house counsel to the Fund?

8 A. Yes.

9 Q. Yes, you misspoke?

10 A. No -- yes, she's the in-house counsel
11 to the Fund.

12 Q. What is your understanding of what it
13 means to be in-house counsel?

14 A. That she's a lawyer that advises us on
15 things as it applies to the Fund, pretty
16 self-explanatory.

17 Q. So your understanding is that any
18 lawyer who advises the Fund is in-house counsel?

19 MS. POSNER: Objection, misstates his
20 testimony.

21 A. No, but any kind of decisions we make,
22 we like to run it by counsel because they're much
23 more verse in the ways and the laws to make sure
24 we don't make a mistake. So we always run
25 anything by counsel for that reason, to see the

1 TODD NEILSON

2 legalities of it.

3 Q. Now, you were asked a number of
4 questions about conversations you had with
5 Ms. Chupka, right?

6 A. Yes.

7 Q. And one of the questions Ms. Posner
8 asked you is whether Ms. Chupka confirmed for you
9 whether she spoke regularly to Ms. Posner as
10 counsel regarding the litigation, and you answered
11 yes.

12 Do you recall that?

13 A. Yes.

14 Q. So tell me everything that Ms. Chupka
15 told you about those conversations with
16 Ms. Posner.

17 MS. POSNER: Objection.

18 If you can answer that without getting
19 into attorney-client privileged
20 communication.

21 THE WITNESS: He knows that.

22 MR. SCHWARTZ: Whoa, whoa, whoa, whoa,
23 whoa. You were the one who opened the door
24 asking about conversations that you had with
25 this person, so I'm not accepting that

1 TODD NEILSON

2 limitation.

3 MS. POSNER: No, I do not waive
4 attorney-client privilege. He -- I should
5 say, the Fund did not waive attorney-client
6 privilege.

7 What he was testifying to was that she
8 said she spoke, not the substance of the
9 conversations.

10 BY MR. SCHWARTZ:

11 Q. Are you going to refuse to answer that
12 question?

13 A. On advice of counsel, yes, I am.
14 That's privileged.

15 Q. Now, Ms. Posner asked you: Will there
16 at any point be a need for a Board of Trustees'
17 vote on whether on settle this case?

18 And you said, no.

19 Do you recall that?

20 A. I do.

21 Q. What's your basis for that testimony?

22 A. Basis for that is I have the ability
23 to make that decision for the Fund without having
24 to get the other trustees involved.

25 Q. And how do you know that?

1 TODD NEILSON

2 A. 'Cause that's how it's written in the
3 document.

4 Q. What document?

5 A. The rules of the Pension Trust Board.

6 Q. What rule are you specifically
7 referring to?

8 A. I don't know -- I don't know the
9 document inside and out, but based on what counsel
10 has told me, I'm well within the parameters of
11 what I'm doing based on the benefit of the Fund,
12 not of myself personally.

13 I'm acting on behalf of the Fund, not
14 on behalf of myself.

15 Q. And who's "counsel" in that answer?

16 A. The attorneys for the Fund.

17 Q. Who specifically?

18 A. I don't actually know what you're
19 getting at.

20 Q. Well, I'm asking for the name of the
21 person that you were just referring to.

22 A. I just -- just per the rules of what
23 I'm allowed -- I don't understand.

24 No one person in particular, it's what
25 I'm allowed to do as it's based on a trust

1 TODD NEILSON

2 document, what we're allowed to do as far as it
3 goes, what we're -- what's within the parameters
4 of what we're allowed to do.

5 Q. Right. So in your prior answer, I
6 asked you: When you referred to "counsel," who
7 was that?

8 And you said, the attorneys for the
9 Fund.

10 And my question is: Who are you
11 referring to?

12 A. I guess the -- you have me at bay
13 because you have the luxury of what I said
14 earlier. I don't know what you're talking about,
15 so I'm not looking at what you're looking at,
16 so ...

17 Q. It's a pretty simple question. You
18 said that somebody --

19 A. Maybe I'm pretty stupid here, I don't
20 know. You know, you're talking to me. I don't
21 appreciate the way you're speaking here, very,
22 very cocky.

23 But anyway, moving on.

24 Q. You said that somebody told you that
25 you were able to function on your own?

1 TODD NEILSON

2 A. Maybe I misspoke.

3 Q. Okay. If you want to change your
4 testimony, that's fine, I just want to make sure I
5 understand.

6 A. Okay.

7 Q. Are you testifying that nobody has, in
8 fact, told you that you have the ability to make
9 all the decisions for this litigation?

10 A. I was advised by Ms. Chupka that I was
11 acting on behalf of the Fund, and based on how
12 that's worked, yes.

13 Q. And earlier, you were asked the
14 question: Will there at any point be a need for a
15 Board of Trustees' vote on whether to settle this
16 case?

17 And you said, no.

18 What is your basis for that testimony?

19 A. Because prior to going into this, the
20 Fund wasn't getting anything in return.

21 Any kind of return we're going to get
22 based on the losses we've incurred, I think that
23 the trustees -- my fellow trustees would be quite
24 happy to see that we're getting compensated for
25 the indiscretion that was done by Deloitte.

1 TODD NEILSON

2 Any recoup of funds for the members
3 and for the fellow stakeholders is a bonus. It's
4 not costing them anything. So if we can bring
5 back our folks a little bit of return for the
6 money they lost, I think everybody would be quite
7 happy.

8 It's my fiduciary responsibility by
9 being a trustee on this Fund.

10 Q. Was your testimony based on your
11 understanding of the trust document?

12 A. Yes, I guess so.

13 Q. When is the last time you reviewed the
14 trust document?

15 A. It's been a while.

16 Q. Like, how long?

17 A. Like, I don't know, a while.

18 Q. More 10 years?

19 A. Probably when I first got on. It's
20 not something that you -- it's not easy reading,
21 which you well know.

22 Q. Has anybody told you that there's not
23 going to be a need for a trustees' vote if the
24 case settles?

25 A. Yeah, that's what I -- that's what

1 TODD NEILSON

2 I'm -- it's my understanding, yes.

3 Q. But what's that understanding based
4 on, just your understanding of the trust document?

5 A. Yes.

6 Q. You were also asked: And do you have
7 the full exclusive authority to act on behalf of
8 the Fund in this action?

9 And you said, I do.

10 Do you recall that?

11 A. I do.

12 Q. And what was the basis for that
13 testimony?

14 A. I'm not sure I understand the
15 question.

16 Q. Well, when you said, "I do," what made
17 you agree to that question?

18 A. I was asked the question, and I
19 answered it.

20 Q. Right. Why did you answer it?

21 A. The answer was, yes, that I have the
22 full ability to act on behalf of the Fund.

23 Q. Right. So what's your basis for your
24 understanding that you have that full ability?

25 A. Based on my fiduciary responsibility

1 TODD NEILSON

2 to the Fund, I have the right to pursue and recoup
3 some of the losses based on the misgivings of
4 Deloitte and the fraud that they committed here.

5 Q. Has anybody told you that you have the
6 full exclusive authority to act on behalf of the
7 Fund for this action?

8 A. No. I guess I just assumed we do.

9 Yes, they did. Of course, they did.
10 That's why we're here.

11 Q. So who told you that?

12 A. The legal team that got us involved up
13 to this point.

14 Q. And they said that you, Mr. Neilson,
15 had the full and exclusive authority to act on
16 behalf of the Fund in this action?

17 A. Just me as a representative of the
18 fund, yes.

19 Q. And who specifically told you that?

20 A. I don't recall.

21 Q. Was it Ms. Chupka?

22 A. I don't recall.

23 Q. Do you recall when you were told that?

24 A. Once, when I got involved in this
25 case. So it was in the beginning.

1 TODD NEILSON

2 When we did the refile with my name on
3 it, yes, in June I believe it was.

4 Q. Ms. Posner asked you: Do the Fund's
5 bylaws require any sort of board resolution or any
6 sort of documentation for you to have that
7 authority?

8 And you said, no, not to my knowledge.

9 Do you recall that?

10 A. Yes, I do.

11 Q. And what was the basis for your
12 testimony there?

13 A. I just said it was not to my
14 knowledge. I had no knowledge of that, so that's
15 the basis of my testimony.

16 Q. So it could very well be the case that
17 the bylaws do require that, you just don't know
18 one way or the other?

19 MS. POSNER: Objection, misstates the
20 testimony.

21 A. Yeah, to my knowledge, we're not in
22 violation of the bylaws based on what the
23 attorneys are telling me.

24 Q. So who told you that you're not --
25 that this wasn't required?

1 TODD NEILSON

2 A. Nobody told me. I said, based on
3 counsel's advice, it doesn't appear to be in
4 violation of any of our rules or bylaws.

5 (Continued on next page for jurat.)

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2 MR. SCHWARTZ: All right. Nothing
3 further.

4 MS. POSNER: I have nothing.

5 VIDEOGRAPHER: This marks the end of
6 the deposition.

7 We're going off the record at
8 2:38 p.m.

9 (Whereupon the proceedings were
10 concluded at 2:38 p.m.)

11 oOo

12 I, TODD NEILSON, the witness herein,
13 do hereby certify that the foregoing
14 testimony of the pages of this deposition to
15 be a true and correct transcript, subject to
16 the corrections, if any, shown on the
17 attached page.

18 _____
19 TODD NEILSON

20 Subscribed and sworn to before me this

21 _____ day of _____, _____.
22 _____
23 _____
24 _____
25 _____

1

2 CERTIFICATE

3 I, AMY A. RIVERA, a Certified Shorthand
4 Reporter, Registered Professional Reporter,
5 Certified LiveNote Reporter, and Notary Public of
6 the State of New York, do hereby certify that prior
7 to the commencement of the examination TODD NEILSON,
8 was duly sworn by me to testify the truth, the whole
9 truth and nothing but the truth.

10 I DO FURTHER CERTIFY that the foregoing is
11 a true and accurate transcript of the testimony as
12 taken stenographically by and before me at the time,
13 place and on the date hereinbefore set forth.

14 I DO FURTHER CERTIFY that I am neither a
15 relative nor employee nor attorney nor counsel of
16 any of the parties to this action, and that I am
17 neither a relative nor employee of such attorney or
18 counsel, and that I am not financially interested in
19 the action. Dated: September 14th, 2021

20



21

22 _____
23 Notary Public of the State of New York

24 My commission expires December 6, 2021

25 License No. XI00939

1

2 INDEX

3	WITNESS	PAGE
4	TODD NEILSON	
5	By Mr. Schwartz	5, 149
6	By Ms. Posner	143

7

8

9

EXHIBITS

10	NUMBER	DESCRIPTION	PAGE
11	Exhibit 15	Amended Notice of	15
12		Deposition of the Fund	
13	Exhibit 16	Declaration of Todd	67
14		Neilson in Support of	
15		Supplemental Motion for	
16		Class Certification,	
17		Appointment of Class	
18		Representative, and	
19		Appointment of Class	
20		Counsel	
21	Exhibit 17	Document, Bates stamped	108
22		PLTF-LOCAL98-0000037	
23	Exhibit 18	PNC statement, Bates	111
24		stamped	
25		PLTF-LOCAL98-0000001	

1

2 EXHIBITS (Continued)

3	NUMBER	DESCRIPTION	PAGE
4	Exhibit 19	Amended and Restated	123
5		Agreement and	
6		Declaration of Trust,	
7		Bates stamped	
8		PLTF-LOCAL98-0000049	
9	Exhibit 20	Form 10-K for South	127
10		Carolina Electric &	
11		Gas, filed February 24,	
12		2017	
13	Exhibit 21	Plaintiffs' Responses	138
14		and Objections to	
15		Defendants' First Set	
16		of Interrogatories	

17

18 PREVIOUSLY MARKED EXHIBITS

19	NUMBER	DESCRIPTION	PAGE
20	Exhibit 7	Document	100

21

22

23

24

25

1

2 MARKED FOR RULING

3 PAGE/LINE DESCRIPTION

4 36 11 Mr. Neilson, what facts have
5 you testified to that supports
6 the Fund's opinion that
7 Deloitte did not do its due
8 diligence?

9 79 18 Does the Fund execute an
10 engagement letter with its
11 auditor?

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1 ERRATA SHEET

2 Case Name:

3 Deposition Date:

4 Deponent:

5	Pg.	No.	Now Reads	Should Read	Reason
6	_____	_____	_____	_____	_____
7	_____	_____	_____	_____	_____
8	_____	_____	_____	_____	_____
9	_____	_____	_____	_____	_____
10	_____	_____	_____	_____	_____
11	_____	_____	_____	_____	_____
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20	_____	_____	_____	_____	_____
21	_____	_____	_____	_____	_____

Signature of Deponent

22 SUBSCRIBED AND SWORN BEFORE ME
23 THIS _____ DAY OF _____, 2021.

24 _____

25 (Notary Public) MY COMMISSION EXPIRES: _____